

Exhibit 2

CONFIDENTIAL - ADAM WERNER, Ph.D.
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

In re: :
: Master File No.
Global Brokerage, Inc. : 1:17-cv-00916-RA
F/k/a FXCM, Inc. :
Securities Litigation :
----- :

REMOTE VIDEO DEPOSITION OF:

ADAM WERNER, Ph.D.
FRIDAY, JUNE 4, 2021

REPORTED BY:
SILVIA P. WAGE, CCR, CRR, RPR
JOB NO. 4577228

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4JUNE 4, 2021

511:03 a.m.

6Remote Videotape deposition via Zoom of

7ADAM WERNER, Ph.D., pursuant to agreement before

8SILVIA P. WAGE, a Certified Shorthand Reporter,

9Certified Realtime Reporter, Registered

10Professional Reporter, and Notary Public for the

11States of New Jersey and New York.

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2I N D E X

3WITNESS: ADAM WERNER, Ph.D. PAGE

4EXAMINATION BY MR. ISAJIW 334

5

6E X H I B I T S

7NO. DESCRIPTION PAGE

8Exhibit Werner 8 Report of Loss Causation 336

9and Damages by Dr. Adam

10Werner April 21, 2021

11Exhibit Werner 9 Rebuttal Report on 341

12Market Efficiency by Dr.

13Adam Werner July 27,

142020

15Exhibit Werner 10 Report and 351

16Recommendations to the

17Honorable Ronnie Abrams

18Exhibit Werner 11 Order Adopting Report & 351

19Recommendation

20Exhibit Werner 12 Order Instituting 452

21Proceedings Pursuant to

22Sections 6(c) and 6(d)

23of the Commodity

24Exchange Act, Making

25Findings, and Imposing

Remedial Sanctions

17PREVIOUSLY MARKED EXHIBITS

18NO. DESCRIPTION PAGE

19Exhibit Werner 3 Notice of Errata, 339

20Certificate of Service

21and Exhibit 1 Corrected

22Opening Report on Market

23Efficiency of Dr. Adam

24Werner January 10, 2020

25Exhibit Werner 7 Opinion & Order 471

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1CONFIDENTIAL - ADAM WERNER, Ph.D.

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19MARCELO RIVERA

20VIDEOGRAPHER

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2- - -

3D E P O S I T I O N S U P P O R T I N D E X

4- - -

5

6Direction to Witness Not to Answer

7Page Line

8395 3

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11Request for Production of Documents

12Page Line

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14Stipulations

15Page Line

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17Question Marked

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20Reservation

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23Motion to Strike

24Page Line

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<p style="text-align: right;">Page 333</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D. 2 THE VIDEOGRAPHER: Good morning. 3 We're going on the record at 11:03 a.m., on 4 June 4th, 2021. 5 This deposition is being taken 6 remotely of Mr. -- I mean, excuse me, Dr. Adam 7 Werner in the matter Global Brokerage Inc., f/k/a 8 FXCM Inc., securities litigation. 9 My name is Marcelo Rivera from 10 Veritext Legal Solutions and I am the 11 Videographer. 12 The Court Reporter is Silvia Wage in 13 association with Veritext Legal Solutions. 14 I am not related to any party in this 15 action. Nor am I financially interested in the 16 outcome. 17 Counsel and all present remotely will 18 now state their appearances and affiliations for 19 the record. If there are any objections to 20 proceeding, please state them at the time of your 21 appearance beginning with noticing attorney. 22 MR. ISAJIW: Peter Isajiw with King & 23 Spalding for Defendants FXCM. 24 MR. DAHAN: Israel Dahan from King & 25 Spalding for the Defendants as well.</p>	<p style="text-align: right;">Page 335</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D. 2 want to encourage at the very beginning for us to 3 be mindful not to speak over each other because 4 it's very difficult for the Court Reporter to get 5 it down. It's even more so on the Zoom platform. 6 So I just wanted to ask you to be mindful of that 7 and I'll do the same; is that okay? 8 A. Sure. 9 Q. Okay. Also, any exhibits I upload 10 today will be introduced through the Exhibit 11 Share platform. 12 Just to confirm you do have access to 13 that; is that right? 14 A. Yes, I have that open in front of me. 15 Q. Okay. And where are you currently 16 located? 17 A. Pismo Beach, California. 18 Q. And is anyone else with you in the 19 room? 20 A. No. 21 Q. Okay. And do you have any materials 22 with you today that are related to this case? 23 A. No. 24 Q. Okay. You were asked by Plaintiffs 25 to provide an expert opinion regarding loss</p>
<p style="text-align: right;">Page 334</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D. 2 MS. ENNIS: Evan Ennis for King & 3 Spalding for the Defendants. 4 MR. BAKER: Josh Baker with the Rosen 5 Law Firm for Plaintiffs and the witness. 6 MR. LaPOINTE: Brent LaPointe with 7 the Rosen Law Firm for the Plaintiff and the 8 witness. 9 THE VIDEOGRAPHER: The Court Reporter 10 please swear in the witness. 11 ADAM WERNER, Ph.D., 12 960 Wadsworth Avenue, Pismo Beach, 13 California 93445, after having been duly 14 sworn, was examined and testified as 15 follows: 16 THE STENOGRAPHER: Thank you. 17 You may proceed. 18 MR. ISAJIW: Thank you. 19 EXAMINATION BY MR. ISAJIW: 20 Q. Good morning, Dr. Werner. Thank you 21 for joining us again today. 22 Given that this is your second 23 deposition in the matter, I know you're familiar 24 with the process. But given that this deposition 25 is being conducted over the Zoom platform, I just</p>	<p style="text-align: right;">Page 336</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D. 2 causation and damages in this matter; is that 3 correct? 4 A. At this stage, I believe, for the 5 purposes of this deposition, I believe, that is 6 correct. 7 Q. Okay. And I want to introduce our 8 first exhibit, which I believe will be Werner 9 Exhibit No. 8 using sequential numbers from your 10 prior deposition. And that would be the 11 April 21, 2021 report on loss causation and 12 damages that you filed in this matter. 13 MR. ISAJIW: Evan, can you put that 14 up on Exhibit Share please. 15 (Deposition Exhibit Werner 8, Report 16 of Loss Causation and Damages by Dr. Adam Werner 17 April 21, 2021, was marked for identification.) 18 MS. ENNIS: It should be there. 19 Q. Can you take a look at the folder and 20 see if you can see that, Dr. Werner? 21 A. Yeah, I'm just resetting it. 22 Okay, here we go. 23 Q. Okay. And Werner 8, this is your 24 report on loss causation and damages submitted in 25 this case April 21, 2021, correct?</p>

<p style="text-align: right;">Page 337</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 A. It appears to be, yes.</p> <p>3 Q. And did you write this report?</p> <p>4 A. I did.</p> <p>5 Q. Anyone assist you with it?</p> <p>6 A. I believe people assisted me in</p> <p>7 drafting it, yes.</p> <p>8 Q. Can you -- who assisted you, was that</p> <p>9 someone from Crowninshield?</p> <p>10 A. Yes.</p> <p>11 Q. And who helped with the drafting of</p> <p>12 this report?</p> <p>13 A. Nariner Walia or Valia -- again, if</p> <p>14 the Court Reporter wants me to spell any of</p> <p>15 these, just go ahead, although they're probably</p> <p>16 -- those name probably appear in earlier</p> <p>17 depositions -- Daniel Bettencourt and Alex Huang.</p> <p>18 Q. Anyone else?</p> <p>19 A. Not as I sit here today -- not that I</p> <p>20 can think of as I sit here today.</p> <p>21 Q. And can you estimate how much time</p> <p>22 Nariner Walia spent assisting you with this</p> <p>23 report?</p> <p>24 A. No.</p> <p>25 Q. How about Daniel Bettencourt?</p>	<p style="text-align: right;">Page 339</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 the same rate that was -- that appears in my</p> <p>3 original market efficiency report.</p> <p>4 Q. Okay. Aside from the Crowninshield</p> <p>5 employees we just talked about, did anybody else</p> <p>6 assist with drafting this report?</p> <p>7 A. I don't believe so.</p> <p>8 Q. And have you done anymore work on</p> <p>9 this matter since filing the report?</p> <p>10 A. With regards to damages and loss</p> <p>11 causation, no.</p> <p>12 Q. Okay. I want to introduce a document</p> <p>13 that had been previously marked as Werner</p> <p>14 Exhibit 3. This is your January 10th, 2020</p> <p>15 Corrected Werner Opening Report on Market</p> <p>16 Efficiency.</p> <p>17 MR. ISAJIW: Evan, can you put that</p> <p>18 up please.</p> <p>19 MS. ENNIS: Just give me one second.</p> <p>20 (Deposition Exhibit Werner 3, Notice</p> <p>21 of Errata, Certificate of Service and Exhibit 1</p> <p>22 Corrected Opening Report on Market Efficiency of</p> <p>23 Dr. Adam Werner January 10, 2020, was previously</p> <p>24 marked for identification.)</p> <p>25 MS. ENNIS: It should be loaded.</p>
<p style="text-align: right;">Page 338</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 A. No.</p> <p>3 Q. What about Alex Huang?</p> <p>4 A. No.</p> <p>5 Q. Do you have any idea what the</p> <p>6 billable rate for each of those people is?</p> <p>7 A. Not as I sit here today. I -- I</p> <p>8 believe -- if you hold on one second. I don't</p> <p>9 know if it's stated here or if you go to my</p> <p>10 original report, my original market efficiency</p> <p>11 report. I believe that the range of rates or the</p> <p>12 possible range of rates for those individuals can</p> <p>13 be found there.</p> <p>14 Q. And they haven't changed since those</p> <p>15 reports, as far as you know?</p> <p>16 A. No.</p> <p>17 Q. How much time did you spend on this</p> <p>18 report?</p> <p>19 A. As I sit here, I don't recall.</p> <p>20 Q. Do you have a rough approximation?</p> <p>21 A. Less than 50 hours, more than</p> <p>22 15 hours.</p> <p>23 Q. And what is your current billable</p> <p>24 rate?</p> <p>25 A. That's an excellent question. It's</p>	<p style="text-align: right;">Page 340</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 Q. And, Dr. Werner, let me know when you</p> <p>3 have access to that.</p> <p>4 A. Okay. It just showed up.</p> <p>5 Q. Okay. And this is your opening</p> <p>6 report on market efficiency, correct?</p> <p>7 A. I believe it's the corrected report</p> <p>8 of my opening report on market efficiency.</p> <p>9 Q. So this would be the operative</p> <p>10 opening report so-to-speak; is that correct?</p> <p>11 A. That is correct.</p> <p>12 MR. BAKER: I'll just note like there</p> <p>13 seems to be another document preceding the</p> <p>14 report, Notice of Errata that was filed with --</p> <p>15 or as part of this exhibit.</p> <p>16 Q. Okay. And behind the Notice of</p> <p>17 Errata is the corrected report.</p> <p>18 The notice is indicating that the --</p> <p>19 this corrected report is superseding the original</p> <p>20 report that was submitted in the matter; is that</p> <p>21 correct?</p> <p>22 A. Correct.</p> <p>23 Q. Okay. And then I would like to</p> <p>24 introduce one more exhibit just so that we have</p> <p>25 it in the report and that would be the July 27,</p>

<p style="text-align: right;">Page 341</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D. 2 2020 Werner Rebuttal Report on Market Efficiency. 3 And I believe this will be Werner Exhibit No. 9. 4 (Deposition Exhibit Werner 9, 5 Rebuttal Report on Market Efficiency by Dr. Adam 6 Werner July 27, 2020, was marked for 7 identification.) 8 MS. ENNIS: Loaded. 9 Q. Dr. Werner, let me know when you have 10 access. 11 A. Still loading. Oh, wait. No, that's 12 the wrong one. Hold on. 13 Okay, I have it in front of me now. 14 Q. And that's your rebuttal report on 15 market efficiency, correct? 16 A. That is correct. 17 Q. Okay. And so do these three reports, 18 the loss causation report, the corrected opening 19 report on market efficiency and the rebuttal 20 report on market efficiency embody the totality 21 of your opinions in this matter? 22 MR. BAKER: Object to the form. 23 A. As of today, yes. 24 Q. Are there any opinions that you've 25 been asked to provide with respect to this matter</p>	<p style="text-align: right;">Page 343</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D. 2 individual screens. 3 THE WITNESS: Ah, okay. Let me do -- 4 I think this is the right one. 5 Q. And if you're going to do that, it 6 may make sense to download the other two as well. 7 A. Okay. 8 MR. BAKER: Peter, when you're 9 talking about the CV on Page 39, you're talking 10 about the PDF numbers or the report page numbers 11 -- 12 MR. ISAJIW: The report page numbers. 13 MR. BAKER: The report page numbers 14 looks like it starts on 37, not 39. 15 MR. ISAJIW: That's correct. The 16 portion that I want to point him to begins on 17 Page 39. 18 MR. BAKER: Okay. That's fine. 19 Q. And just let me know when you're 20 ready, Dr. Werner. 21 A. Okay. I think these are all 22 downloaded now. 23 So let's go to Page 37 of my 24 April 21st report? 25 Q. That's fine.</p>
<p style="text-align: right;">Page 342</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D. 2 that are not included in these reports? 3 A. Not that I can think of. 4 Q. Other than the materials disclosed in 5 your reports, are there any other materials that 6 you relied on to form the basis of your opinions 7 in this matter? 8 A. And so when you say, "materials," I'm 9 assuming you're referring to, essentially, 10 Exhibit 2 on each of these reports? 11 Q. That's correct. 12 A. That is correct. 13 Q. Okay. Let's turn -- 14 A. You may want to re-ask the question. 15 I'm not sure I answered -- I haven't considered 16 any other documents outside of those listed in 17 Exhibit 2 of the three reports in front of me. 18 Q. Okay. Thank you for that. 19 Looking at your loss causation 20 report, can you turn to Exhibit 1, which is your 21 CV. And it's on Page 39 of that report. 22 A. You may not know this. Is there a 23 way to keep multiple documents open? 24 THE STENOGRAPHER: Yes. You can 25 download them to your computer and open</p>	<p style="text-align: right;">Page 344</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D. 2 A. Okay, I'm there. 3 Q. And 37 is the beginning of your 4 curriculum vitae; is that correct? 5 A. That is correct. 6 Q. And if you flip to Page 39, there's a 7 section called, "Expert Reports and Testimony." 8 Let me know when you're there. 9 A. Okay, I'm there. 10 Q. Comparing this curriculum vitae to 11 the ones included in your prior market efficiency 12 report, it seems to me that you issued reports 13 and declarations in three additional cases the 14 Nova Life, Array Biopharma and Innocoll Holdings; 15 is that correct? 16 MR. BAKER: You mean since his 17 previous report? 18 MR. ISAJIW: That's correct. 19 A. So hold on. Sorry, if you go between 20 documents, it takes you back to the first page 21 so... 22 Q. Yeah. 23 A. Bear with me. 24 Q. That's okay. 25 A. Just to the best of my recollection,</p>

<p style="text-align: right;">Page 345</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 as I sit here, I believe also -- and this is --</p> <p>3 there is a space missing, so I'm on Page 40 of my</p> <p>4 report dated -- in April of this year.</p> <p>5 It looks like there is a Michael</p> <p>6 Tietz versus Crytobloc Technology Corp report.</p> <p>7 But that's a report in Canada. I don't know if</p> <p>8 you include that in your additional reports.</p> <p>9 Q. Oh, I see.</p> <p>10 So, when you say, "there is a space</p> <p>11 missing," that is combined with the paragraph for</p> <p>12 Innocoll Holdings; is that correct?</p> <p>13 A. Exactly.</p> <p>14 Q. Other than those four matters, any</p> <p>15 other additional engagements or opinions</p> <p>16 regarding market efficiency since your last</p> <p>17 deposition?</p> <p>18 A. It's possible, but as I sit here</p> <p>19 today I can't think of any.</p> <p>20 Q. Were there any -- focusing on your</p> <p>21 loss causation report in this matter, were there</p> <p>22 any materials that you requested as part of your</p> <p>23 engagement that you did not receive from either</p> <p>24 the Rosen Law Firm or Crowninshield or any other</p> <p>25 source?</p>	<p style="text-align: right;">Page 347</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 thinking of that you're unsure of?</p> <p>3 A. No, but it's possible. I mean, it's</p> <p>4 possible that I saw something. I just don't</p> <p>5 recall as I sit here today.</p> <p>6 Q. If you turn to Paragraph 1, Page 1 of</p> <p>7 your loss causation report, you define "FXCM</p> <p>8 notes" as a "2.25 percent convertible senior note</p> <p>9 due in 2018," correct?</p> <p>10 A. That is correct.</p> <p>11 Q. So, if I use the term "FXCM notes"</p> <p>12 today, you'll understand that I'm referring to</p> <p>13 those notes; is that okay?</p> <p>14 A. Yes.</p> <p>15 Q. And you define the class period as</p> <p>16 March 15th, 2012 through February 6th, 2017; is</p> <p>17 that correct?</p> <p>18 A. For the notes?</p> <p>19 Q. For the class period.</p> <p>20 A. So I'm sorry. Can you repeat the</p> <p>21 question?</p> <p>22 Q. Yeah. I just want to make sure that</p> <p>23 we're on the same page getting started on defined</p> <p>24 terms.</p> <p>25 So you define the term in this</p>
<p style="text-align: right;">Page 346</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 A. No.</p> <p>3 Q. And did you conduct any loss</p> <p>4 causation or damages analysis that's not</p> <p>5 reflected in your loss causation report?</p> <p>6 MR. BAKER: With respect to this</p> <p>7 case?</p> <p>8 MR. ISAJIW: Yes.</p> <p>9 A. No.</p> <p>10 Q. And are there any materials that you</p> <p>11 relied upon or considered in connection with your</p> <p>12 analysis of loss causation in this case that are</p> <p>13 not listed under the documents considered in</p> <p>14 Exhibit 2 of any of the other reports?</p> <p>15 A. And this report? I don't believe so.</p> <p>16 Q. And this report, yeah.</p> <p>17 And since you filed this particular</p> <p>18 loss causation report, are there any other</p> <p>19 materials that you have reviewed relating to this</p> <p>20 case that are relevant to your opinions?</p> <p>21 A. No.</p> <p>22 Q. Okay.</p> <p>23 A. Oh, wait. I don't believe so would</p> <p>24 be a more accurate answer.</p> <p>25 Q. Is there anything that you're</p>	<p style="text-align: right;">Page 348</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 paragraph "class period" to mean the time between</p> <p>3 March 15th, 2012 and February 6th, 2017; is that</p> <p>4 correct?</p> <p>5 A. For the equity?</p> <p>6 Q. For the term "class period" as a</p> <p>7 defined term at the end. I believe it's at the</p> <p>8 second to last sentence of Paragraph 1.</p> <p>9 A. Yeah, I think we're talking semantics</p> <p>10 here.</p> <p>11 So, yes, I have defined that as the</p> <p>12 class period. But I think of the note period as</p> <p>13 a different period since it is a subset of that</p> <p>14 time period.</p> <p>15 Q. We'll get to the note period next.</p> <p>16 I just want to make sure when we use</p> <p>17 the term "class period," as you define it, you're</p> <p>18 talking about March 15th, 2012 to February 6th,</p> <p>19 2017?</p> <p>20 A. Okay, sure.</p> <p>21 Q. And when we use the term "notes</p> <p>22 period," as you defined it, you're talking about</p> <p>23 June 24, 2014 through February 6th, 2017; is that</p> <p>24 correct?</p> <p>25 A. Correct.</p>

<p style="text-align: right;">Page 349</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 Q. Okay. And so throughout today, if</p> <p>3 we're using the terms "class period" or "notes</p> <p>4 period," I just want to make sure we can</p> <p>5 shorthand and use those same time definitions; is</p> <p>6 that okay?</p> <p>7 A. As long as we're being clear as to</p> <p>8 whether or not we're talking about the equity or</p> <p>9 the notes, yes.</p> <p>10 Q. Okay. And to the extent we're not</p> <p>11 clear, please let me know if you have a question</p> <p>12 about it and I will do my best to clarify, okay?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. Turning to Page 2 of your</p> <p>15 report under "Conclusions." You conclude in</p> <p>16 Paragraph 7 that the prices of the FXCM stock and</p> <p>17 the FXCM notes were artificially inflated over</p> <p>18 the course of the class period; is that correct?</p> <p>19 A. That is correct.</p> <p>20 Q. Okay. And as you know, the Court</p> <p>21 held an evidentiary hearing on class</p> <p>22 certification in this matter, right?</p> <p>23 A. Correct.</p> <p>24 Q. And that hearing dealt with market</p> <p>25 efficiency with respect to FXCM notes; is that</p>	<p style="text-align: right;">Page 351</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 MS. ENNIS: It's loaded.</p> <p>3 (Deposition Exhibit Werner 10, Report</p> <p>4 and Recommendations to the Honorable Ronnie</p> <p>5 Abrams, was marked for identification.)</p> <p>6 (Deposition Exhibit Werner 11, Order</p> <p>7 Adopting Report & Recommendation, was marked for</p> <p>8 identification.)</p> <p>9 MS. ENNIS: That should be loaded as</p> <p>10 well.</p> <p>11 A. Okay, I have them in front of me.</p> <p>12 Q. Okay. Did you review the Court's</p> <p>13 decision regarding Plaintiffs' motion for class</p> <p>14 certification before drafting your loss causation</p> <p>15 report?</p> <p>16 A. I'm sorry. Could you repeat that</p> <p>17 question please?</p> <p>18 Q. Yeah. Did you review the Court's</p> <p>19 decision regarding Plaintiffs' motion for class</p> <p>20 certification before drafting your loss causation</p> <p>21 report?</p> <p>22 A. So let's go look at my documents</p> <p>23 relied upon for my April -- wait.</p> <p>24 When did this decision come out?</p> <p>25 Q. It's filed March 18, 2021.</p>
<p style="text-align: right;">Page 350</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 correct?</p> <p>3 A. It may have touched on the -- on</p> <p>4 general calculation of damages. As I sit here, I</p> <p>5 don't recall. But, generally, that's correct.</p> <p>6 Q. Yeah. And so, I guess, what I'm</p> <p>7 asking is you were aware that hearing dealt with</p> <p>8 market efficiency in connection with the FXCM</p> <p>9 notes, correct?</p> <p>10 A. Among other things, yes.</p> <p>11 Q. And you testified at the hearing; is</p> <p>12 that right?</p> <p>13 A. I did.</p> <p>14 Q. And Dr. Hendershott also testified at</p> <p>15 the hearing?</p> <p>16 A. He did.</p> <p>17 Q. And I want to introduce two exhibits</p> <p>18 related to that hearing. The first is a</p> <p>19 March 18, 2021 Report and Recommendation to the</p> <p>20 Honorable Ronnie Abrams.</p> <p>21 MR. ISAJIW: Evan, can you load that.</p> <p>22 MS. ENNIS: Okay.</p> <p>23 MR. ISAJIW: And the second is</p> <p>24 March 23, 2020 Order Adopting the Order and</p> <p>25 Recommendation.</p>	<p style="text-align: right;">Page 352</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 A. Okay. So, prior to the filing of</p> <p>3 this report.</p> <p>4 It's possible. I don't recall, as I</p> <p>5 sit here.</p> <p>6 Q. Is it listed in Exhibit 2 of your</p> <p>7 report?</p> <p>8 A. It is not.</p> <p>9 Q. Okay. Can you turn to Page 37 of the</p> <p>10 Report and Recommendation, which is Exhibit</p> <p>11 Werner 10.</p> <p>12 A. Okay.</p> <p>13 Q. Okay. At Page 37 the Court says, "I</p> <p>14 further find that balancing all of the Cammer and</p> <p>15 Krogman factors Plaintiffs have not met their</p> <p>16 burden of demonstrating that the FXCM notes</p> <p>17 traded in an efficient market throughout the</p> <p>18 notes period. The issue size was relatively</p> <p>19 small, smaller than any of the cases relied on by</p> <p>20 Plaintiffs in their reports and the notes were</p> <p>21 unregistered, initially restricted and thereafter</p> <p>22 traded only among a fairly small number of QIBs.</p> <p>23 No analyst followed the FXCM notes as opposed to</p> <p>24 the FXCM stock and none of the ratings agencies</p> <p>25 rated them. Moreover, the volume and frequency</p>

7 (Pages 349 - 352)

<p style="text-align: right;">Page 353</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 of the trading decreased over the course of the</p> <p>3 noise period with the volume dipping below the</p> <p>4 camera benchmarks after October 2015. The only</p> <p>5 direct evidence of market efficiency in the</p> <p>6 record offered to show a cause and effect</p> <p>7 relationship between the release of</p> <p>8 'company-specific news' and changes to the price</p> <p>9 of the FXCM notes is Dr. Werner's event study,</p> <p>10 which is of limited utility due to the nature and</p> <p>11 timing of the two events chosen. Because the</p> <p>12 Plaintiffs have not established that the FXCM</p> <p>13 notes traded in an efficient market, they cannot</p> <p>14 rely on the basic presumption of reliance as to</p> <p>15 the notes meaning that each note purchaser would</p> <p>16 be required to prove individually that it relied</p> <p>17 on the Defendant's allegedly false and misleading</p> <p>18 statements in making its purchases. This in turn</p> <p>19 means that the Plaintiffs cannot satisfy the</p> <p>20 predominance requirement of Rule 23(b)(3) with</p> <p>21 respect to the notes."</p> <p>22 Did I read that correctly?</p> <p>23 A. I believe the last sentence was with</p> <p>24 respect to the FXCM notes but otherwise, yes.</p> <p>25 Q. Thanks.</p>	<p style="text-align: right;">Page 355</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 question?</p> <p>3 A. Well, I'm slightly confused because</p> <p>4 we're talking about the class period versus the</p> <p>5 note period. So are you referring to the class</p> <p>6 period or the note period?</p> <p>7 Q. I'm referring to your Paragraph 7 of</p> <p>8 your loss causation report. Take a look at that.</p> <p>9 A. Well, I will in a second, but I'm</p> <p>10 just trying to answer your question based on this</p> <p>11 paragraph or the statement you just read to me.</p> <p>12 So I'm trying to get clarification on what you</p> <p>13 mean.</p> <p>14 Q. I'm helping you get clarification by</p> <p>15 referring to Paragraph 7 of your report.</p> <p>16 A. Alright. We'll agree to disagree.</p> <p>17 So now you want me to go to</p> <p>18 Paragraph 7 of my April 21st report, correct?</p> <p>19 Q. That's correct.</p> <p>20 A. Okay.</p> <p>21 Q. In the third sentence you say, "The</p> <p>22 alleged representations and omissions caused the</p> <p>23 prices of FXCM stock and FXCM notes to be</p> <p>24 artificially inflated over the course of the</p> <p>25 class period."</p>
<p style="text-align: right;">Page 354</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 And if you turn to Page 40 of that</p> <p>3 same decision.</p> <p>4 A. Okay.</p> <p>5 Q. You'll see the Court says, "For the</p> <p>6 reason set forth above, I recommend respectfully</p> <p>7 that Plaintiffs' class certification motion be</p> <p>8 granted in part as to the FXCM stock and denied</p> <p>9 in part as to the FXCM notes."</p> <p>10 Did I read that correctly?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. So going back to your opinion</p> <p>13 in Paragraph 7 of your loss causation report</p> <p>14 where you state that the FXCM notes were</p> <p>15 "artificially inflated over the course of the</p> <p>16 class period," are you aware that the Court has</p> <p>17 already determined that there is no class or</p> <p>18 class period for the FXCM notes in this case?</p> <p>19 MR. BAKER: Objection to form. Just</p> <p>20 where it refers to the -- the term being as</p> <p>21 defined as class period before versus -- we're</p> <p>22 hopping between multiple documents here. So I</p> <p>23 want to be clear that which definitions of which</p> <p>24 periods we're using here.</p> <p>25 Q. Dr. Werner, do you understand the</p>	<p style="text-align: right;">Page 356</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 Do you see that?</p> <p>3 A. I do see that.</p> <p>4 Q. And I'm just asking that when you</p> <p>5 state that the FXCM notes were artificially</p> <p>6 inflated over the course of the class period, are</p> <p>7 you aware that the Court has already determined</p> <p>8 that there is no class for the FXCM notes?</p> <p>9 A. Okay.</p> <p>10 MR. BAKER: Objection.</p> <p>11 A. So let's --</p> <p>12 THE WITNESS: Oh, go ahead. Sorry,</p> <p>13 Josh.</p> <p>14 MR. BAKER: It's alright.</p> <p>15 Objection to form.</p> <p>16 But if you understand it, you can</p> <p>17 answer it.</p> <p>18 A. Okay. So let's separate out a couple</p> <p>19 of things. So it probably -- the sentence is</p> <p>20 somewhat inarticulate on my part. I probably</p> <p>21 should have specified the notes period with</p> <p>22 regards to the notes.</p> <p>23 To the extent that the class for the</p> <p>24 notes wasn't certified, that has nothing to do</p> <p>25 with whether or not I'm able to calculate or</p>

<p style="text-align: right;">Page 357</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 estimate damages for individual plaintiffs.</p> <p>3 Q. When you drafted your loss causation</p> <p>4 report, were you aware that the Court had</p> <p>5 determined that there was no class for note</p> <p>6 holders?</p> <p>7 A. I believe the answer to that question</p> <p>8 is, yes.</p> <p>9 Q. And were you aware that the Court had</p> <p>10 already rejected your opinion and conclusion that</p> <p>11 the FXCM notes traded in an efficient market?</p> <p>12 MR. BAKER: Objection to form.</p> <p>13 A. Yes.</p> <p>14 Q. Does the fact that the Court had</p> <p>15 already determined that there was no class for</p> <p>16 the FXCM notes change your conclusion on loss</p> <p>17 causation for the notes here?</p> <p>18 A. No.</p> <p>19 Q. Does the fact that the Court has</p> <p>20 rejected your contention that the FXCM notes</p> <p>21 traded in an efficient market changed your</p> <p>22 conclusion on loss causation for the FXCM notes</p> <p>23 here?</p> <p>24 A. I'm sorry. Could you repeat that</p> <p>25 question?</p>	<p style="text-align: right;">Page 359</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 corrected original report and possibly to my</p> <p>3 rebuttal report on market efficiency.</p> <p>4 Would you like me to do that?</p> <p>5 Q. Sitting here today based on your work</p> <p>6 on this matter thus far, you don't have the</p> <p>7 ability to answer that question without reference</p> <p>8 to your report; is that correct?</p> <p>9 A. No.</p> <p>10 Q. Okay. That's not correct, or you</p> <p>11 cannot answer the question without reference to</p> <p>12 your report?</p> <p>13 A. That is not correct.</p> <p>14 Q. So, if you can answer the question</p> <p>15 without reference to your report, I just want to</p> <p>16 get your understanding sitting here today as to</p> <p>17 what event you understood marked the beginning of</p> <p>18 the class period March 15, 2012.</p> <p>19 MR. BAKER: He said he doesn't know</p> <p>20 sitting here today already; asked and answered.</p> <p>21 A. Like I said, I want to be as accurate</p> <p>22 as possible in this deposition. So I'm happy to</p> <p>23 refer to my previous reports to refresh my memory</p> <p>24 to make sure that I'm as accurate as possible in</p> <p>25 answering your question.</p>
<p style="text-align: right;">Page 358</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 Q. Does the fact that the Court has</p> <p>3 already rejected your contention that the FXCM</p> <p>4 notes traded in an efficient market change your</p> <p>5 conclusion on loss causation for the FXCM notes</p> <p>6 here?</p> <p>7 A. No.</p> <p>8 Q. Switching to the FXCM common stock,</p> <p>9 you begin the class period on March 15th, 2012.</p> <p>10 What event do you contend marks the</p> <p>11 start of the class period?</p> <p>12 A. I don't understand the question.</p> <p>13 MR. BAKER: Yeah, objection to form.</p> <p>14 Q. Focusing on the common stock, you</p> <p>15 define the class period as the period of time</p> <p>16 between March 15, 2012 and February 6, 2017,</p> <p>17 correct?</p> <p>18 A. That is correct.</p> <p>19 Q. What is your understanding of the</p> <p>20 event that created the beginning point of the</p> <p>21 class period of March 15, 2012?</p> <p>22 A. So, to answer that question</p> <p>23 accurately, I'd need to -- and I have them in</p> <p>24 front of me, and so I'm happy to refer to them,</p> <p>25 if you'd like me to -- my amended -- or my</p>	<p style="text-align: right;">Page 360</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 So it seems to me that it's -- I --</p> <p>3 well, I choose as I sit here today -- if you want</p> <p>4 me to answer that question, I'm happy to refer to</p> <p>5 my other reports to make sure I'm giving you the</p> <p>6 most accurate answer that I possibly can.</p> <p>7 Q. And can you answer the question</p> <p>8 sitting here today without reference to the</p> <p>9 report?</p> <p>10 MR. BAKER: Objection, asked and</p> <p>11 answered.</p> <p>12 A. I refer to my previous answer to that</p> <p>13 question.</p> <p>14 Q. Was that previous answer a yes or no?</p> <p>15 I'm just trying to clarify the</p> <p>16 record.</p> <p>17 MR. BAKER: How many times do we need</p> <p>18 to ask this?</p> <p>19 MR. ISAJIW: Until he answers it.</p> <p>20 MR. BAKER: He answered it twice.</p> <p>21 A. I'm -- do you want -- let me know</p> <p>22 when you guys are ready for me to answer.</p> <p>23 Q. We're ready.</p> <p>24 A. Okay. I refer to -- if the Court</p> <p>25 Reporter wants to go back and read my previous</p>

<p style="text-align: right;">Page 361</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 answer to that question, I'm more than happy to</p> <p>3 have her do that, if you can't remember the</p> <p>4 answers to my questions. But I've provided my</p> <p>5 answer to those questions.</p> <p>6 Q. Okay. So you can't answer the</p> <p>7 question without reference to the report. We'll</p> <p>8 ask a second question.</p> <p>9 A. I'm sorry, wait. Is that what I</p> <p>10 stated?</p> <p>11 Q. I believe so.</p> <p>12 A. I believe you're mischaracterizing my</p> <p>13 statement. I'll let Josh -- I'll let Josh object</p> <p>14 to it, if he sees fit.</p> <p>15 MR. BAKER: Why don't we move to the</p> <p>16 next question instead of asking the same one over</p> <p>17 and over. What's the next question?</p> <p>18 Q. What event marks the end of the class</p> <p>19 period?</p> <p>20 A. I'm just trying to give you the most</p> <p>21 accurate answer possible. I mean, one possible</p> <p>22 answer -- and, I mean, I can give you a more --</p> <p>23 comprehensive answers is the one listed in</p> <p>24 Paragraph 8 of my report. That be -- when I say,</p> <p>25 "my report," I'm referring to my loss causation</p>	<p style="text-align: right;">Page 363</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 prices of FXCM securities resulted from certain</p> <p>3 alleged misrepresentations and omissions"; is</p> <p>4 that correct?</p> <p>5 A. So you're reading -- I'm sorry.</p> <p>6 You're reading from the first sentence in</p> <p>7 Paragraph 7? I mean, we might as well just read</p> <p>8 into the record.</p> <p>9 "The alleged misrepresentation and</p> <p>10 omissions caused the price of the FXCM stock and</p> <p>11 FXCM notes to be artificially inflated over the</p> <p>12 course of the class period."</p> <p>13 And, again, you and I have had</p> <p>14 disagreements in the last, I don't know, 5 or</p> <p>15 10 minutes about whether or not with regards to</p> <p>16 the notes I'm talking about the class period or</p> <p>17 the notes period. Again, I believe I was</p> <p>18 probably inarticulate in the writing of that</p> <p>19 sentence. And so, with regards to the notes, I</p> <p>20 probably should have said "notes period."</p> <p>21 Q. What were "the alleged</p> <p>22 misrepresentations and omissions" you're</p> <p>23 referring to in Paragraph 7?</p> <p>24 A. So, turning to Paragraph 26 of my</p> <p>25 report -- and, again, when I say -- can we agree</p>
<p style="text-align: right;">Page 362</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 report of April this year.</p> <p>3 "The corrected disclosure at the end</p> <p>4 of the class period provided the market with the</p> <p>5 understanding that the company's purported lack</p> <p>6 of conflict of interest was false and as a result</p> <p>7 of the company's business model would no longer</p> <p>8 be sustainable and FXCM would be subject to</p> <p>9 regulatory repercussions. Following the</p> <p>10 corrective disclosure, analyst valuation models</p> <p>11 reflected the reality that the company could no</p> <p>12 longer operate its businesses in the US and that</p> <p>13 FXCM had previously misrepresented the veracity</p> <p>14 of its agency business model. Thus corrective</p> <p>15 disclosures and their inextricable ramifications</p> <p>16 dissipated the artificial inflation in the prices</p> <p>17 of FXCM securities and thereby cause investor</p> <p>18 losses."</p> <p>19 And before you jump in...</p> <p>20 THE WITNESS: I apologize to the</p> <p>21 Court Reporter if I've been going too fast. If</p> <p>22 you'd like me to slow down, please let me know.</p> <p>23 Q. Let's focus on the paragraph before</p> <p>24 that, on Paragraph 7. In Paragraph 7 you</p> <p>25 conclude that, "the artificial inflation in the</p>	<p style="text-align: right;">Page 364</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 when I say, "my report," unless I specify</p> <p>3 otherwise, we're talking about my April report</p> <p>4 with regard to loss causation and damages?</p> <p>5 Q. That's fine.</p> <p>6 A. Okay. So looking at Paragraph 26 and</p> <p>7 beginning with subpoint A, retail customers</p> <p>8 profits or losses would have -- or maybe let me</p> <p>9 read the previous sentence.</p> <p>10 "Plaintiffs allege that FXCM falsely</p> <p>11 represented/omitted to investors and market</p> <p>12 participants that, A, retail customer's profits</p> <p>13 or losses would have no effect on FXCM's interest</p> <p>14 because FXCM's role was merely as an agent or</p> <p>15 credit intermediary. B, despite the company's</p> <p>16 claims of having no conflicts of interest for its</p> <p>17 retail customer's trading on the NDD platform,</p> <p>18 FXCM, in fact, had an undisclosed financial</p> <p>19 interest in the market maker that consistently</p> <p>20 'won' -- and that "won" is in quotation marks --</p> <p>21 "the largest share of FXCM's NDD" -- D as in</p> <p>22 David -- "trading volume, Effex Capital (Effex).</p> <p>23 C, Effex was essentially a front created by FXCM</p> <p>24 allowing for FXCM to hold positions opposite its</p> <p>25 customers and financially benefit at its</p>

<p style="text-align: right;">Page 365</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D. 2 customers expense in direct contravention to the 3 company's representations to investors and to its 4 own customers of conflict free trading on the 5 NDD." Subpoint D, "FXCM manipulated its NDD 6 platform by putting Effex" -- and now when I say 7 "Effex" that's the word E-F-F-E-X, as opposed to 8 FX, the letters as in FXCM -- "in front of 9 independent market makers in routing retail 10 customer orders while also permitting Effex to 11 win all 'ties' with other market makers. FXCM 12 provided Effex" -- again, that's the company 13 Effex -- "with the realtime view of price 14 quotations offered by other market makers and 15 added smaller markups to Effex" -- again, that's 16 the company -- "prices then to prices provided by 17 other market makers. This way FXCM ensured that 18 the bulk of its order flow would go to Effex" -- 19 the company -- "and generate profits for FXCM. 20 C, Effex" -- again, that's the company -- 21 "payment to FXCM were disguised as order flow 22 payments which no other market maker was making 23 to FXCM. FXCM's financial statements violated 24 SEC regulations and Generally Accepted Accounting 25 Principles (GAAP) for failing to disclose FXCM's</p>	<p style="text-align: right;">Page 367</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D. 2 with your understanding of the allegations of 3 misrepresentations and omissions in this matter. 4 A. Any other articles or material that 5 I've cited in any of my three reports when I'm 6 dealing with the corrective disclosure and/or the 7 alleged misrepresentations/omissions of the 8 Defendants in this case. 9 Q. Okay. Turning back to Paragraph 8 of 10 your report, you conclude in Paragraph 8 that, 11 "The artificial inflation in the price of FXCM 12 securities was dissipated as a result of the 13 corrective disclosures and its inextricable 14 ramifications"; is that right? 15 A. You read that correctly, yes. 16 Q. Okay. What are the "inextricable 17 ramifications" you're referring to? 18 A. I'm sorry, I don't understand the 19 question. 20 Q. You wrote, "Thus corrective 21 disclosures and their 'inextricable 22 ramifications' dissipated the artificial 23 inflation in the prices of FXCM securities and 24 thereby caused investor losses"; is that correct? 25 A. That is correct.</p>
<p style="text-align: right;">Page 366</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D. 2 economic interest in contractual and related 3 partnership with and control over Effex" -- with 4 an E -- "during the class period." 5 Q. And Paragraph 26 represents your sum 6 total understanding of "the alleged 7 misrepresentations and omissions" in this case? 8 A. No, I believe, there are other 9 portions of this report, as well as my previous 10 reports that cover that subject matter. 11 Q. For Paragraph 26 for each of those 12 allegations, you cite the complaint that was 13 filed in this matter; is that correct? 14 A. That appears to be correct. 15 Q. Other than reference to the 16 complaint, are there any other sources of 17 material that you analyzed in connection with the 18 allegations listed in Paragraph 26? 19 A. Yes. 20 Q. What are those? 21 A. Well, okay. So do you want me to 22 begin with my market efficiency report and going 23 through the list of documents I've reviewed? 24 Q. I don't. I'm just asking what 25 additional materials you relied on in connection</p>	<p style="text-align: right;">Page 368</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D. 2 MR. BAKER: Objection. 3 A. I believe so. I'm -- 4 MR. BAKER: I think you added another 5 quote. 6 A. Yeah, I'm now parsing through the 7 report to get to the part where I can be 8 responsive to your question so... 9 Q. So sitting here today I'm just asking 10 you what are the "inextricable ramifications" you 11 are referring to in Paragraph 8 of your 12 conclusions? 13 A. Right. And I'm going to the portion 14 of my report that will give you the most accurate 15 description or answer to your question. 16 Okay. So beginning in Paragraph 44 17 of my report -- and I'll just read this -- 18 "Analysts and news commentary deemed the above 19 news as negative. Oppenheimer and Cowen and 20 Company analyzed comment as follow: Yesterday 21 FXCM made an announcement (see below) that led to 22 a 50 percent decline in FXCM share price. One 23 component but in our view by no means the most 24 valuable component of Luk's investment" -- oh, is 25 this the right one, hold on. Yes -- "investment</p>

<p style="text-align: right;">Page 369</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D. 2 in FXCM as a 49.9 percent ownership stake in FXCM 3 and this has, of course, raised concerns about 4 the valuation of the asset. To settle the 5 charges, FXCM will pay \$7 million to the CFTC and 6 no monetary damages to the NFA." 7 I should note that I believe at one 8 point in this report I wrote "CFA" instead of 9 what I meant to say NFA. So, if you run across 10 that, I don't mean certified financial analyst, I 11 mean NFA. 12 "The company will also be shutting 13 down its US business. On February 6th, FXCM 14 announced a \$7 million settlement with the CFTC, 15 which essentially forced them to sell their US 16 business. The CFTC complaint said FXCM and two 17 of its founding principals made false and 18 misleading solicitations by concealing from 19 customers that a chief market maker was 20 re-bidding, roughly, 70 percent of its revenue to 21 FXCM. It obviously sounds like a terrible fact 22 pattern." And that is from an Oppenheimer 23 report. 24 Now let me continue. "FXCM announced 25 late yesterday that it had reached agreement with</p>	<p style="text-align: right;">Page 371</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D. 2 report dated February 7th of 2017. 3 Finally, FXCM -- oh, I shouldn't say 4 "finally." There's actually two more portions 5 here. 6 "FXCM plans to layoff about 150 7 workers for about 18 percent of its workforce as 8 it restructures operations following two 9 regulatory settlements that forced it to exit the 10 US market. The foreign exchange broker, which is 11 selling its US customer accounts to Gain expects 12 to" -- and that's a company name, so capital G in 13 Gain -- expects to recognize the bulk of selling 14 its US customers -- oh, sorry, "expects to 15 recognize the bulk of the pre-tax restructuring 16 charge in the March quarter, according to a 17 regulatory filing shares drop 54 percent to 18 \$3.13." And that is from a Dow Jones 19 institutional News article dated February 7th of 20 2017. 21 "Finally" -- and now I use that word 22 properly -- the Commodity Futures Trading 23 Commission hit forex capital markets parent 24 company FXCM Holdings and two founding partners 25 with \$7 million fine over" -- excuse me --</p>
<p style="text-align: right;">Page 370</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D. 2 the National Futures Association (NFA) and 3 Commodity Futures Trading Commission (CFTC), 4 settling charges that the company did not 5 disclose to customers that it had an interest in 6 the market maker that traded the largest share of 7 FXCM's trading volume. The CFTC order found that 8 the market maker paid, roughly, 70 percent of the 9 revenues generated from FXCM's platform back to 10 FXCM. To be clear, this matter was not the 11 August complaint from the CFTC. We believe this 12 new settlement resolves this new issue and, at 13 least, some of the issues that had been part of 14 the original August complaint. To settle the 15 charges, FXCM will pay \$7 million to the CFTC and 16 no monetary damages to the NFA. The company will 17 also be shutting down its US business. Also, as 18 a financial services company, it is certainly not 19 a good thing for their ongoing foreign operations 20 that they were pretty much forced out of the US 21 and that their debt and equity prices put parent 22 level solvency into question (at least, in the 23 market's mind). Solvency was, of course, always 24 a question but" not in -- [now] it is a front and 25 center question." And that is from a Cowen</p>	<p style="text-align: right;">Page 372</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D. 2 "alleged trading misrepresentations. Now FXCM 3 Incorporated as pulling out of the US in an exit 4 that will free up almost \$52 million in capital. 5 Gain Capital Holdings Incorporated is acquiring 6 the US client base." 7 And that is from S&L Financial Extra, 8 again, dated -- oh, but the article is, "J.P. 9 Morgan Gain China Interbank Bond Market 10 Licenses." 11 So that's what I mean when I say 12 inextricably -- or let's go back to the exact 13 language. I haven't had all my coffee yet today. 14 That's what I mean when I say 15 "inextricable ramifications." And, again, here 16 I'm referring to Paragraph 7 of my report. 17 Q. Is it your opinion that there were no 18 -- I'm sorry, back up. 19 So those are the "inextricable 20 ramifications" of the corrective disclosure in 21 February of 2017; is that correct? 22 A. I'm not sure. Let me just read this 23 to make sure. 24 Q. Let me ask a better question. 25 In Paragraph 8, the one that we were</p>

<p style="text-align: right;">Page 373</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D. 2 referring to, which you were just responding to, 3 I believe, you wrote, "Thus the corrective 4 disclosures and their inextricable ramifications 5 dissipated the artificial inflation of the prices 6 of FXCM securities and thereby caused investor 7 losses." 8 I believe you just gave me your best 9 as answer as to what you meant by the 10 "inextricable ramifications." 11 I'm now asking, are those 12 ramifications of which corrective disclosures? 13 A. I'm sorry. Are there -- are there 14 multiple corrective disclosures in this case? 15 Q. That's what I'm asking you. 16 You wrote, "The corrective 17 disclosures and their inextricable 18 ramifications." 19 What do you understand the corrective 20 disclosures to be in that -- as you used it in 21 that sentence? 22 A. Oh, I'm sorry. Now, I'm confused. 23 So -- oh, I see what you're saying. 24 Yes, you should probably get rid of 25 the "S" in disclosures and make that disclosure,</p>	<p style="text-align: right;">Page 375</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D. 2 Q. And you relied on that same event 3 study to conclude that the dissipation of 4 artificial inflation in the price of FXCM 5 securities caused investor losses; is that right? 6 A. Among other things, yes. 7 Q. In looking at Paragraph 10 of your 8 loss causation report, you say that, "These 9 conclusions were based on fundamental principles 10 of finance and valuation, company statements, 11 internal company documents, news articles, 12 analyst reports and event study analysis"; is 13 that correct? 14 A. That is correct. 15 Q. And I believe we discussed earlier 16 that all of the documents you considered in 17 connection with your opinions in this matter are 18 listed in Exhibit 2 of the loss causation reports 19 and your prior report; is that right? 20 A. I believe that is correct, yes. 21 Q. If you flip to Exhibit 2 of this 22 report. 23 A. Okay. 24 Q. You do not list any documents that 25 were produced by FXCM, correct?</p>
<p style="text-align: right;">Page 374</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D. 2 singular, as I mention in Paragraph 9 when I'm 3 talking about the corrective disclosure singular 4 on February 7th, 2017. 5 Q. In your opinion, are there no prior 6 disclosures or events that dissipated the alleged 7 artificial inflation in the price of FXCM 8 securities during the class period? 9 MR. BAKER: To be clear, we're 10 talking about prior to February 6th, 2017? 11 MR. ISAJIW: Correct. 12 A. So, prior to February 6th, I don't 13 believe so. 14 Q. You conduct an event study for this 15 loss causation report; is that right? 16 A. I did. 17 Q. And was that the same event study 18 that you used in connection with your prior 19 report on market efficiency? 20 A. That is correct. 21 Q. And you relied on that event study to 22 conclude that the February 2017 corrective 23 disclosure dissipated the artificial inflation in 24 the price of FXCM securities, right? 25 A. Among other things, yes.</p>	<p style="text-align: right;">Page 376</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D. 2 A. In this -- in this particular -- in 3 this exhibit, it doesn't appear so. But, again, 4 I -- it -- what -- I also have any other 5 documents and data cited in the report. I'm 6 happy to go through the entire report and look at 7 every footnote and re-read it to let you know if 8 there's anything that I referred to, 9 specifically, with regard to the company. 10 Do you want me to do that or... 11 Q. I don't want you to do that. We've 12 done that and we did not see reference to any 13 documents produced by FXCM in this case. 14 And if you take a look at Exhibit 2 15 to your January 2020 Corrected Opening Report on 16 Market Efficiency, which is Page 76 to 92 of that 17 document. 18 A. I'm sorry, which report are we 19 talking about now? 20 Q. Your Opening Report on Market 21 Efficiency, which is Werner Exhibit 3. 22 A. Right, okay. 23 And where would you like me to go? 24 Q. Exhibit 2, which begins on Page 76 25 and goes to 92.</p>

<p style="text-align: right;">Page 377</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 A. Okay.</p> <p>3 Q. Again, there are no documents</p> <p>4 produced by FXCM listed there, correct?</p> <p>5 A. Well, I don't know how to answer that</p> <p>6 question. I don't know exactly what FXCM has</p> <p>7 produced, the company itself has produced in this</p> <p>8 case.</p> <p>9 Q. The documents that you reviewed are</p> <p>10 all publically available documents; isn't that</p> <p>11 correct?</p> <p>12 A. It's an interesting question. I</p> <p>13 don't know.</p> <p>14 Do you believe that all investment</p> <p>15 banking analyst articles are publically</p> <p>16 available?</p> <p>17 Q. Let's assume for the sake of this</p> <p>18 question that they are.</p> <p>19 A. Okay.</p> <p>20 Q. With that assumption, the list is all</p> <p>21 publically available documents; is that correct?</p> <p>22 A. I mean, as I sit here today, I</p> <p>23 believe -- well, you know, hold on. Let me</p> <p>24 finish this; no.</p> <p>25 Q. Of the documents that you are unsure</p>	<p style="text-align: right;">Page 379</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 will represent to you that we did not find any</p> <p>3 documents produced by FXCM relied on in</p> <p>4 connection with your reports or listed on</p> <p>5 Exhibit 2 of any of your reports.</p> <p>6 With that in mind, turning back to</p> <p>7 Paragraph 10 of your loss causation report, you</p> <p>8 say that your conclusions are based on "amongst</p> <p>9 other things internal company documents."</p> <p>10 Which "internal company documents"</p> <p>11 are you referring to?</p> <p>12 A. As I sit here today, I don't know.</p> <p>13 Q. And none are listed in the Exhibit 2</p> <p>14 of any of the reports we just went through; is</p> <p>15 that correct?</p> <p>16 A. Well, I don't -- I'm not sure that's</p> <p>17 an accurate statement. I mean, to the extent</p> <p>18 that the complaint may have referred to internal</p> <p>19 company documents, the CFTC or the TFA -- no, not</p> <p>20 TFA -- FTA, sorry there we go, referred to</p> <p>21 internal client -- I mean, client documents --</p> <p>22 FXCM documents. I mean, there is a whole host of</p> <p>23 things in here that I've listed as materials</p> <p>24 relied upon that refer to FXCM internal</p> <p>25 documents.</p>
<p style="text-align: right;">Page 378</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 whether they're publically available, were they</p> <p>3 produced by FXCM in this matter?</p> <p>4 A. I don't know one way or the other as</p> <p>5 I sit here today.</p> <p>6 Q. And if you take a look at Exhibit 2</p> <p>7 to your July 2020 rebuttal report, again --</p> <p>8 A. Well, hold on.</p> <p>9 Q. Sure.</p> <p>10 A. Okay, here we go. Okay, I'm there</p> <p>11 now.</p> <p>12 Q. Again, there are no documents</p> <p>13 produced by FXCM listed in that exhibit; is that</p> <p>14 correct?</p> <p>15 A. Again, I don't know whether that's</p> <p>16 correct or not. I don't know exactly what FXCM</p> <p>17 has turned over in this case.</p> <p>18 Q. Again, they are all publically</p> <p>19 available documents that you listed; is that</p> <p>20 correct?</p> <p>21 A. Well, so, to the extent that we're</p> <p>22 talking about any other documents and data cited</p> <p>23 in the report, without going through the report,</p> <p>24 I can't accurately answer your question.</p> <p>25 Q. We have gone through the report and I</p>	<p style="text-align: right;">Page 380</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 So, as I sit here today, I don't know</p> <p>3 how to answer that question accurately.</p> <p>4 Q. To the extent --</p> <p>5 A. I, certainly -- I, certainly, can't</p> <p>6 give you a fully inclusive answer, as I sit here</p> <p>7 today.</p> <p>8 Q. In connection with your work in this</p> <p>9 matter, did you review any documents produced by</p> <p>10 Effex Capital?</p> <p>11 A. As I sit here today, I don't recall.</p> <p>12 Q. How about Ernst & Young?</p> <p>13 A. It's certainly possible.</p> <p>14 Q. Do you recall -- do you recall any</p> <p>15 specific Ernst & Young-produced documents?</p> <p>16 A. Well, why don't we go -- if you would</p> <p>17 like to introduce some of the firm's financials</p> <p>18 as exhibits, I'd be happy to look through those</p> <p>19 and let you know if Ernst & Young provided any</p> <p>20 opinions in that or any of the other financial</p> <p>21 documents I referred to or any of the analyst</p> <p>22 reports that might possibly refer to Ernst &</p> <p>23 Young.</p> <p>24 Q. But sitting here today, you can't</p> <p>25 recall any specific documents produced by Ernst &</p>

<p style="text-align: right;">Page 381</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 Young that you relied in connection within your</p> <p>3 report, correct?</p> <p>4 A. My answer is what it is.</p> <p>5 Q. Did you read the deposition</p> <p>6 transcript of Drew Niv in this matter?</p> <p>7 A. That name sounds familiar, but I</p> <p>8 don't recall. It's certainly possible.</p> <p>9 Q. Is the deposition -- well, I'll</p> <p>10 represent to you that the deposition transcript</p> <p>11 of Drew Niv is not referenced anywhere in</p> <p>12 Exhibit 2 to any of your reports. Nor is it</p> <p>13 referenced in any footnotes in any of your</p> <p>14 reports.</p> <p>15 Does that refresh your recollection</p> <p>16 as to whether or not you ever reviewed the</p> <p>17 deposition of Drew Niv?</p> <p>18 A. It doesn't only because I know I have</p> <p>19 seen, at least, one deposition -- at least, one</p> <p>20 deposition in this case that I reviewed. I don't</p> <p>21 know if it was that individual's.</p> <p>22 And to the extent I haven't included</p> <p>23 it in my Exhibit 2 to any of my reports, it was</p> <p>24 an oversight on my part.</p> <p>25 Q. Did you review the deposition</p>	<p style="text-align: right;">Page 383</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 that?</p> <p>3 Q. It's not necessary.</p> <p>4 I'm just asking you to confirm that</p> <p>5 your answer was that you listed the documents</p> <p>6 that you relied on in connection with your report</p> <p>7 in your report, correct.</p> <p>8 MR. BAKER: Objection as asked and</p> <p>9 answered but...</p> <p>10 A. I'm sorry. I'm trying to give you</p> <p>11 the most precise answer that I can. So, you</p> <p>12 know, you guys always ask all sorts of</p> <p>13 hypothetical questions like is it possible. So</p> <p>14 rather than -- let's eliminate is it</p> <p>15 possible aspect of --</p> <p>16 Q. Dr. Werner, my question did not have</p> <p>17 "is it possible" --</p> <p>18 A. Let me finish.</p> <p>19 MR. BAKER: Counsel, let the witness</p> <p>20 --</p> <p>21 A. I'm sorry. Let me finish. Let me</p> <p>22 finish. I'm speaking.</p> <p>23 To the extent that I'm trying to be</p> <p>24 as accurate as possible, let's go back to my</p> <p>25 original answer to that question rather than</p>
<p style="text-align: right;">Page 382</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 transcript of John Dittami?</p> <p>3 A. As I sit here today, I don't know one</p> <p>4 way or the other.</p> <p>5 Q. Did you review the deposition</p> <p>6 transcript of William Ahdout?</p> <p>7 A. As I sit here today, I don't know one</p> <p>8 way or the other.</p> <p>9 Q. It fair to say that to the extent</p> <p>10 that these documents are not listed as documents</p> <p>11 relied upon in any of your reports that you do</p> <p>12 not base your conclusions on any of these</p> <p>13 documents; is that correct?</p> <p>14 A. I can't answer that one way or the</p> <p>15 other, as I sit here today.</p> <p>16 Q. I think earlier today you answered</p> <p>17 that you listed all of the documents in your</p> <p>18 Exhibit 2s to your report or otherwise in</p> <p>19 footnotes to the extent that you relied on them</p> <p>20 in connection with your opinions; isn't that</p> <p>21 correct?</p> <p>22 A. That is correct. I believe so. I</p> <p>23 mean, I'm happy to have the Court Reporter go</p> <p>24 back and try to find the answer to that question.</p> <p>25 Would the Court Reporter like to do</p>	<p style="text-align: right;">Page 384</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 asking me if I recall that that is what I said.</p> <p>3 That's what I would like to do.</p> <p>4 Q. Okay.</p> <p>5 A. And to the extent my job here is to</p> <p>6 be as accurate as possible, that's what I would</p> <p>7 like to do.</p> <p>8 Q. That is unnecessary.</p> <p>9 The original answer has been</p> <p>10 recorded. I was just asking you to confirm it.</p> <p>11 We can move along, but I...</p> <p>12 In paragraph --</p> <p>13 A. Okay. I'm sorry. So you have the</p> <p>14 answer?</p> <p>15 Q. I believe you testified, which is --</p> <p>16 I believe you testified that to the extent you</p> <p>17 relied on documents or information in connection</p> <p>18 with your reports, you listed them in Exhibit 2</p> <p>19 to those reports or otherwise referred to them in</p> <p>20 the footnotes of those reports; is that correct?</p> <p>21 MR. BAKER: Asked and answered.</p> <p>22 A. Well, that's what your belief --</p> <p>23 THE WITNESS: I'm sorry. Go ahead,</p> <p>24 Josh.</p> <p>25 MR. BAKER: Objection, asked and</p>

<p style="text-align: right;">Page 385</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 answered. And I thought we were about to move</p> <p>3 on.</p> <p>4 A. That's what your belief is. But</p> <p>5 since we have the record, we don't have to rely</p> <p>6 our belief, right. We can go back to the record</p> <p>7 and we can then know if that is the answer to my</p> <p>8 -- to the question that you're asking.</p> <p>9 Q. I'm asking you to answer that</p> <p>10 question sitting here right now today.</p> <p>11 MR. BAKER: Objection, asked and</p> <p>12 answered, as he was sitting here earlier today.</p> <p>13 MR. ISAJIW: Josh, "objection to</p> <p>14 form" is sufficient.</p> <p>15 MR. BAKER: Asking a question once is</p> <p>16 sufficient.</p> <p>17 A. I refer to my answer earlier today.</p> <p>18 Q. Okay. In Paragraph 11 of your</p> <p>19 report, you concluded that, "The price of FXCM's</p> <p>20 common stock was inflated by, at least, \$3.39 per</p> <p>21 share during the class period"; is that right?</p> <p>22 A. I'm sorry. I'm looking at the wrong</p> <p>23 report. So let me get to the right report. Let</p> <p>24 me make sure that this is the right report.</p> <p>25 You're speaking of Exhibit 8,</p>	<p style="text-align: right;">Page 387</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 get to my loss causation report and then I'll</p> <p>3 look at that paragraph.</p> <p>4 Okay.</p> <p>5 Q. In Paragraph 11, you concluded that,</p> <p>6 "The price of FXCM's common stock was inflated</p> <p>7 by, at least, \$3.39 per share during the class</p> <p>8 period"; is that correct?</p> <p>9 A. That's -- you read that correctly.</p> <p>10 Q. And in this paragraph, you also</p> <p>11 concluded that, "The price of FXCM's notes were</p> <p>12 inflated by, at least, \$16.31 per \$100 of par</p> <p>13 throughout the notes period"; is that correct?</p> <p>14 A. That is what I wrote.</p> <p>15 Q. And in Paragraph 12, you concluded</p> <p>16 that, "The damages for investors who held FXCM's</p> <p>17 common stock until February 7th, 2017 are up to</p> <p>18 \$3.39 per share"; is that right?</p> <p>19 A. That is what I wrote and it should --</p> <p>20 it should -- and I wrote the same thing about the</p> <p>21 notes. It should really say "at least," as it</p> <p>22 did in Paragraph 11 for both of those -- for both</p> <p>23 the notes and the equity.</p> <p>24 Q. As we've discussed, this loss</p> <p>25 causation report and your prior market efficiency</p>
<p style="text-align: right;">Page 386</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 correct?</p> <p>3 Q. Your loss causation report.</p> <p>4 A. Right. And so I'm just making sure</p> <p>5 we're talking about Exhibit 8, because it appears</p> <p>6 to me as Plaintiffs' expert report. I assume</p> <p>7 that's my loss causation report, but I'm just</p> <p>8 trying to make sure that I'm at the right place.</p> <p>9 Q. Earlier today at your suggestion we</p> <p>10 agreed when I say, "your report," you would refer</p> <p>11 to your loss causation report.</p> <p>12 A. Well, I'm happy to have the Court</p> <p>13 Reporter go ahead and read that back, if you're</p> <p>14 asking me that. I'm just trying -- look, I've</p> <p>15 got like five documents open now, right. It's</p> <p>16 not like I have papers sitting in front of me.</p> <p>17 So I'm just going back and forth between the</p> <p>18 tabs.</p> <p>19 So you need to be a little patient</p> <p>20 when you keep going back and forth between</p> <p>21 different documents. Does that seem reasonable?</p> <p>22 Q. Dr. Werner, I'm just asking you to</p> <p>23 look at Paragraph 11 of your loss causation</p> <p>24 report.</p> <p>25 A. Okay. So let's take a pause. Let me</p>	<p style="text-align: right;">Page 388</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 report represent the full extent of your opinions</p> <p>3 in the matter regarding loss causation and</p> <p>4 damages; is that right?</p> <p>5 A. I believe that's correct.</p> <p>6 Q. And they reflect the full universe of</p> <p>7 documents and information you relied on in</p> <p>8 connection with forming your conclusions; is that</p> <p>9 correct?</p> <p>10 MR. BAKER: Objection, asked and</p> <p>11 answered.</p> <p>12 A. I think we --</p> <p>13 THE WITNESS: I'm sorry, Josh, were</p> <p>14 you objecting?</p> <p>15 MR. BAKER: So you can go ahead.</p> <p>16 A. I think we've -- I've asked and</p> <p>17 answered that question multiple times now.</p> <p>18 MR. ISAJIW: Now is probably a good</p> <p>19 time for a five-minute break.</p> <p>20 THE VIDEOGRAPHER: The time is</p> <p>21 12:12 p.m. and we're going off the record.</p> <p>22 (Recess taken 12:12 to 12:19 p.m.)</p> <p>23 THE VIDEOGRAPHER: The time is</p> <p>24 12:19 p.m. and we're back on the record.</p> <p>25 Q. Dr. Werner, are you familiar with an</p>

<p style="text-align: right;">Page 389</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 entity called 683 Capital?</p> <p>3 A. Am I familiar? I believe so.</p> <p>4 Q. And who is 683 Capital?</p> <p>5 A. Well, if you'd like -- the best way</p> <p>6 for me to answer that is for you to introduce the</p> <p>7 Complaint in this matter to ensure that I give</p> <p>8 the most accurate response.</p> <p>9 Q. I don't think that's necessary.</p> <p>10 Do you understand that 683 Capital</p> <p>11 was one of the Plaintiffs in this matter?</p> <p>12 MR. BAKER: Object to form.</p> <p>13 A. Again, I believe, that's correct.</p> <p>14 But I'm happy to take a look at the Complaint --</p> <p>15 was there an Amended Complaint in this case?</p> <p>16 Either way, I'm happy to look at</p> <p>17 either those or -- to make sure that I'm being</p> <p>18 accurate.</p> <p>19 Q. You submitted a market efficiency</p> <p>20 report in support of Plaintiffs' motion for class</p> <p>21 certification and to be appointed as class</p> <p>22 representative in this case, correct?</p> <p>23 A. Are you now referring to my original</p> <p>24 market efficiency report --</p> <p>25 Q. I am.</p>	<p style="text-align: right;">Page 391</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 to speculate, as I sit here today.</p> <p>3 Q. Let's take another look at the</p> <p>4 March 18th, 2021 Report and Recommendation to the</p> <p>5 Honorable Ronnie Abrams, which is, I believe,</p> <p>6 Exhibit 10.</p> <p>7 A. I thought I had downloaded it, but</p> <p>8 evidently I haven't so...</p> <p>9 Oh, okay. Yeah, I have it in front</p> <p>10 of me.</p> <p>11 Q. Okay. If you look at the bottom of</p> <p>12 Page 1, the Court says, "For the reasons that</p> <p>13 follow, I respectfully recommend that the motion</p> <p>14 be granted as FXCM's Class A common stock."</p> <p>15 A. Sorry, I'm not there yet. I just</p> <p>16 have the document open. I haven't gotten to the</p> <p>17 part where you're reading.</p> <p>18 So we're talking -- I'm sorry, what</p> <p>19 paragraph?</p> <p>20 Q. The very last paragraph on the first</p> <p>21 page?</p> <p>22 A. Oh, okay, I'm there.</p> <p>23 Q. "For the reasons that follow, I</p> <p>24 respectfully recommend that the motion be granted</p> <p>25 as to FXCM's Class A Common Stock and denied as</p>
<p style="text-align: right;">Page 390</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 A. -- or amended market efficiency</p> <p>3 report?</p> <p>4 Q. I am.</p> <p>5 A. Yes.</p> <p>6 Q. Okay. And that market efficiency</p> <p>7 report was used in support of Plaintiffs' motion</p> <p>8 for class certification and to be appointed as</p> <p>9 class representative in this matter; is that</p> <p>10 right?</p> <p>11 A. I believe so.</p> <p>12 Q. And 683 Capital was one of those</p> <p>13 Plaintiffs; is that correct?</p> <p>14 A. Again, I'm happy to verify that by</p> <p>15 looking at the Complaint. But, to the best of my</p> <p>16 recollection, which, again, this isn't really a</p> <p>17 memory test, I believe that is correct.</p> <p>18 If you want to represent to me that</p> <p>19 they're one of the Plaintiffs in this case, I'm</p> <p>20 happy to agree with you.</p> <p>21 Q. Okay. Do you know whether or not 683</p> <p>22 Capital was a notes purchaser in connection with</p> <p>23 this case?</p> <p>24 A. Again, I'm happy to look at the</p> <p>25 Complaint to answer that question. I don't want</p>	<p style="text-align: right;">Page 392</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 to its 2.25 percent convertible senior notes due</p> <p>3 in 2018."</p> <p>4 And if you turn to Page 14 of this</p> <p>5 opinion -- let me know when you're there.</p> <p>6 A. Okay.</p> <p>7 Q. In the middle of the first full</p> <p>8 paragraph on that page the Court says,</p> <p>9 "Defendants do not contest the predominance as to</p> <p>10 the stock class but argue vigorously that the</p> <p>11 notes class cannot be certified because the FXCM</p> <p>12 notes did not trade in an efficient market,</p> <p>13 meaning, that the purchasers of those securities</p> <p>14 cannot rely on the fraud on the market hypothesis</p> <p>15 and would instead be required to establish on an</p> <p>16 individual basis that each of them actually</p> <p>17 relied on Defendant's misleading statements. I</p> <p>18 agree. Therefore, even if the notes class were</p> <p>19 sufficiently numerous, I would not recommend</p> <p>20 certifying."</p> <p>21 Do you see that?</p> <p>22 A. I do.</p> <p>23 Q. And then if you turn to Page 37 at</p> <p>24 the bottom, the Court says, Because --</p> <p>25 A. Hold on, hold on. Okay.</p>

<p style="text-align: right;">Page 393</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 Q. At the bottom the paragraph says,</p> <p>3 "Because Plaintiffs have not established that the</p> <p>4 FXCM notes traded in an efficient market, they</p> <p>5 cannot rely on the basic presumption of reliance</p> <p>6 as to the notes, meaning, that each note</p> <p>7 purchaser would be required to prove individually</p> <p>8 that it relied on Defendant's allegedly false or</p> <p>9 misleading statements in making its purchases.</p> <p>10 This in turn means that Plaintiffs cannot satisfy</p> <p>11 the predominance requirement of Rule 23(b)(3)</p> <p>12 with respect to the FXCM notes."</p> <p>13 Do you see that?</p> <p>14 A. I do.</p> <p>15 Q. Do you understand that 683 Capital is</p> <p>16 now an individual plaintiff and not a class</p> <p>17 representative in this matter?</p> <p>18 A. Again --</p> <p>19 MR. BAKER: Objection to form. I'm</p> <p>20 sorry let me -- objection to the extent that it</p> <p>21 calls for a legal conclusion.</p> <p>22 You can answer.</p> <p>23 A. I'm happy to look at whatever court</p> <p>24 documents that will refresh my memory on this.</p> <p>25 If you want to stipulate to that, it's fine.</p>	<p style="text-align: right;">Page 395</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 outside knowledge of that.</p> <p>3 [INSTRUCTION] But if it's based on,</p> <p>4 you know, communications with Counsel, I would</p> <p>5 instruct you not to answer.</p> <p>6 THE WITNESS: Okay.</p> <p>7 A. Based on advice of Counsel I'm not</p> <p>8 going to answer that.</p> <p>9 Q. Just to be clear -- and I don't want</p> <p>10 you to reveal any information that Counsel may</p> <p>11 have provided you in a privileged context.</p> <p>12 But sitting here today, you cannot</p> <p>13 answer the question of whether or not you've been</p> <p>14 separately retained by 683 Capital as an</p> <p>15 individual plaintiff without resort to privileged</p> <p>16 information; is that correct?</p> <p>17 A. Okay, so...</p> <p>18 Q. I just want to be sure I'm --</p> <p>19 A. When you say -- no, look, I</p> <p>20 understand. I'm trying to make these as simple</p> <p>21 as possible, because these are very vague</p> <p>22 question.</p> <p>23 So, when you say, "retained</p> <p>24 separately," what do you mean by retained</p> <p>25 separately?</p>
<p style="text-align: right;">Page 394</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 I'll believe you.</p> <p>3 But, you know, is it my</p> <p>4 understanding? Off the top of my head, I don't</p> <p>5 remember. But I do know that I've seen the</p> <p>6 documents about them before. I believe that they</p> <p>7 are individual Plaintiffs in this matter.</p> <p>8 But it simply be easier when you're</p> <p>9 asking questions like this, if you're assuming</p> <p>10 they're correct, that you just stipulate to that</p> <p>11 so I need to look at other documents to refresh</p> <p>12 my memory.</p> <p>13 Q. Have you been separately retained by</p> <p>14 683 Capital as an individual Plaintiff to provide</p> <p>15 a damages analysis on their behalf, as opposed to</p> <p>16 on behalf of a notes class?</p> <p>17 MR. BAKER: Objection to the form.</p> <p>18 A. I don't know how to answer that. I</p> <p>19 believe -- well, I refer to -- I defer to</p> <p>20 Counsel. I'm not sure if that's privileged or</p> <p>21 not. If it's not privileged, I'm happy to</p> <p>22 answer.</p> <p>23 MR. BAKER: Yeah, to the extent you</p> <p>24 can answer outside of any conversations you had</p> <p>25 with Counsel, you can answer, if you have any</p>	<p style="text-align: right;">Page 396</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 Q. As an individual plaintiff, as</p> <p>3 opposed to being retained to provide an opinion</p> <p>4 on behalf of a notes class.</p> <p>5 A. So how do I --</p> <p>6 MR. BAKER: Objection.</p> <p>7 THE WITNESS: I'm sorry, go ahead.</p> <p>8 MR. BAKER: No. Same objection and</p> <p>9 instruction. To the extent that you can answer</p> <p>10 without relying on conversations between yourself</p> <p>11 and Counsel, you can answer.</p> <p>12 A. Alright. So, if the question is,</p> <p>13 have I signed a separate contract with the entity</p> <p>14 you were discussing, they haven't been retained</p> <p>15 me or -- and I'll be generous here. When we talk</p> <p>16 about me, we should also probably include</p> <p>17 Crowninshield.</p> <p>18 I don't know.</p> <p>19 Q. Have you calculated 683 Capital's</p> <p>20 damages on an individual basis?</p> <p>21 A. Again, I defer to Counsel as to</p> <p>22 whether or not I can answer that. I don't know</p> <p>23 if that information is privileged or not.</p> <p>24 MR. BAKER: Let's say if you can</p> <p>25 answer outside of conversations with Counsel, if</p>

<p style="text-align: right;">Page 397</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 there's something in your report, then you can</p> <p>3 answer the question. [INSTRUCTION] But to the</p> <p>4 extent that the question involves conversations</p> <p>5 between you and your Counsel, I would instruct</p> <p>6 you not to answer.</p> <p>7 A. Alright. Based on Counsel's</p> <p>8 representations, I cannot answer those questions</p> <p>9 or that question.</p> <p>10 Q. Is it fair to say that nothing in</p> <p>11 your loss causation report expresses an opinion</p> <p>12 regarding the specific damages of 683 Capital as</p> <p>13 an individual in connection with their purchase</p> <p>14 of FXCM securities; is that correct?</p> <p>15 A. No.</p> <p>16 Q. Where in your report do you specify</p> <p>17 683 Capital's individual damages?</p> <p>18 MR. BAKER: Objection to form.</p> <p>19 A. Well, I have --</p> <p>20 THE WITNESS: I'm sorry, Josh. I</p> <p>21 don't mean to keep interrupting you. I didn't</p> <p>22 hear your objection, so go ahead.</p> <p>23 MR. BAKER: Objection to form.</p> <p>24 And you can answer, if you know the</p> <p>25 answer.</p>	<p style="text-align: right;">Page 399</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 please go ahead.</p> <p>3 A. I don't have anything to add.</p> <p>4 Q. I want to switch to talking, again,</p> <p>5 about your event study conducted in connection</p> <p>6 with the loss causation report here.</p> <p>7 You would agree that it's possible</p> <p>8 for a security to over or under react to news; is</p> <p>9 that right?</p> <p>10 A. Oh, again --</p> <p>11 MR. BAKER: Objection to form.</p> <p>12 Go ahead.</p> <p>13 A. You may be -- is it possible --</p> <p>14 look --</p> <p>15 Q. I'm asking your opinion as an expert</p> <p>16 is it possible.</p> <p>17 A. Let me answer the question.</p> <p>18 You are answering extremely imprecise</p> <p>19 questions. So, when you ask me, "is it</p> <p>20 possible," I believe, can you refer to my</p> <p>21 previous deposition testimony when we discussed</p> <p>22 the possibilities of over or under reactions.</p> <p>23 Did this occur here? That is not --</p> <p>24 no. I mean, obviously, it's your deposition. I</p> <p>25 hope Josh has sent you the bill for this. We can</p>
<p style="text-align: right;">Page 398</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 A. So, when you say, "individual</p> <p>3 damages," what do you mean?</p> <p>4 Q. I mean, the damages 683 Capital</p> <p>5 allegedly suffered in connection with their</p> <p>6 purchase of FXCM securities.</p> <p>7 A. So you're --</p> <p>8 THE WITNESS: And, Josh, if you want</p> <p>9 to object, go ahead.</p> <p>10 A. But your question's imprecise, right.</p> <p>11 They as note holders suffered damages per note.</p> <p>12 So, yes, to the extent that I calculated those</p> <p>13 damages, I have calculated damages in this report</p> <p>14 for that entity. If you're talking about</p> <p>15 aggregate damages, that is not presented here in</p> <p>16 this report.</p> <p>17 Q. So you offer no opinion on 683</p> <p>18 Capital's aggregate damages in connection with</p> <p>19 your loss causation report?</p> <p>20 A. Without --</p> <p>21 MR. BAKER: Objection to form.</p> <p>22 I'm sorry.</p> <p>23 Objection to the extent that his</p> <p>24 prior answer answered that question.</p> <p>25 But if you have anything to add,</p>	<p style="text-align: right;">Page 400</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 go as long as you want. But, look, I'm just try</p> <p>3 to be as accurate as possible here.</p> <p>4 Q. In your opinion, is it more likely</p> <p>5 for a security to over or under react to news in</p> <p>6 an inefficient market, a market that is not</p> <p>7 efficient, than it would be to over or under</p> <p>8 react in an efficient market?</p> <p>9 MR. BAKER: Objection, incomplete</p> <p>10 hypothetical.</p> <p>11 Answer, if you are able.</p> <p>12 A. Yeah, I don't know how to answer your</p> <p>13 hypothetical question.</p> <p>14 Q. Efficient markets incorporate news</p> <p>15 into the price of a security quickly and fully,</p> <p>16 would you agree with that statement?</p> <p>17 A. I'm happy to read the -- if you want</p> <p>18 me to point me to what you're reading off of, I'm</p> <p>19 happy to review that statement and tell you</p> <p>20 whether or not I agree with you in the context of</p> <p>21 where I've written that.</p> <p>22 Q. I'm just asking as background to your</p> <p>23 opinions in this matter, as your role as an</p> <p>24 economist, would you agree with the statement</p> <p>25 that efficient markets incorporate news into the</p>

<p style="text-align: right;">Page 401</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 price of a security quickly and fully?</p> <p>3 A. Right. And I believe that that's a</p> <p>4 quote from one of my reports. And so, to the</p> <p>5 extent that you're quoting one of my reports and</p> <p>6 you would like me to review it, I'm happy to do</p> <p>7 it.</p> <p>8 Q. But I'm not quoting your report. I'm</p> <p>9 asking a general proposition question.</p> <p>10 A. As a general proposition? So</p> <p>11 generally, yes, I believe that's accurate.</p> <p>12 Q. Okay. And that's one of the reasons</p> <p>13 an event study can help determine investor losses</p> <p>14 in an efficient market; is that right?</p> <p>15 A. I believe that is correct.</p> <p>16 Q. Because an efficient market the</p> <p>17 prices would quickly and fully reflect any</p> <p>18 alleged corrective information; is that correct?</p> <p>19 A. It's going to depend upon the</p> <p>20 security.</p> <p>21 Q. Is it more likely for the price of a</p> <p>22 security to quickly and fully reflect alleged</p> <p>23 corrective information in a market that is</p> <p>24 efficient or a market that is not efficient?</p> <p>25 MR. BAKER: Objection, incomplete</p>	<p style="text-align: right;">Page 403</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 Q. When you conducted the event study</p> <p>3 here for the FXCM notes, did you assume that the</p> <p>4 market for the FXCM notes was efficient?</p> <p>5 A. Well, to the extent that I was trying</p> <p>6 to prove efficiency, I don't think -- I don't</p> <p>7 believe I made it an assumption one way or the</p> <p>8 other.</p> <p>9 Q. Were you trying to prove efficiency</p> <p>10 in connection with your loss causation report?</p> <p>11 A. No.</p> <p>12 Q. Okay. In connection with the</p> <p>13 analysis that you did with your loss causation</p> <p>14 report, you conducted an event study, correct?</p> <p>15 A. I mean, I had previously conducted an</p> <p>16 event study in my original market efficiency</p> <p>17 report. I relied on that analysis for this</p> <p>18 report. And when I say, "this," I'm talking</p> <p>19 about my loss causation and damages report.</p> <p>20 Q. And in connection with your analysis</p> <p>21 for your loss causation and damages report, when</p> <p>22 you relied on the event study for the FXCM notes,</p> <p>23 did you assume in your loss causation analysis</p> <p>24 that the market for FXCM notes was efficient?</p> <p>25 A. That's not anything I considered or I</p>
<p style="text-align: right;">Page 402</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 hypothetical.</p> <p>3 But you can answer.</p> <p>4 A. Yeah, as I sit here today, I don't</p> <p>5 know how to answer your hypothetical question.</p> <p>6 Q. Would you agree as a general</p> <p>7 proposition that inefficient market do not</p> <p>8 incorporate news into the price of a security</p> <p>9 quickly and fully?</p> <p>10 A. Again, I don't know how to answer</p> <p>11 your hypothetical question.</p> <p>12 Q. I don't believe it's a hypothetical.</p> <p>13 I think it's a general proposition question.</p> <p>14 A. Okay. Repeat the question then,</p> <p>15 please.</p> <p>16 Q. Inefficient -- would you agree that</p> <p>17 inefficient markets do not incorporate news into</p> <p>18 the price of a security quickly and fully?</p> <p>19 A. Not necessarily.</p> <p>20 THE WITNESS: I'm sorry, Josh, were</p> <p>21 you going to say something?</p> <p>22 MR. BAKER: No, that's fine. I think</p> <p>23 previously he said general proposition but I</p> <p>24 think we clarified that for now. So that's fine.</p> <p>25 A. Not necessarily.</p>	<p style="text-align: right;">Page 404</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 considered in submitting this report. So I have</p> <p>3 to think about that.</p> <p>4 Q. So sitting here today, you can't tell</p> <p>5 me whether or not your loss causation analysis</p> <p>6 for the FXCM notes assumed an efficient market?</p> <p>7 A. I defer to my previous answer.</p> <p>8 Q. If you did not assume that the notes</p> <p>9 market was efficient, how can you be certain that</p> <p>10 the alleged corrective disclosure caused a price</p> <p>11 drop in the FXCM notes?</p> <p>12 MR. BAKER: Object to the form.</p> <p>13 A. I don't understand the question.</p> <p>14 Q. We just discussed and, I believe, you</p> <p>15 agreed that an efficient market news is</p> <p>16 incorporated into the price of a security quickly</p> <p>17 and fully; is that right?</p> <p>18 A. I think I said generally.</p> <p>19 Q. Okay.</p> <p>20 A. That is correct.</p> <p>21 Q. So, if the market is not efficient</p> <p>22 and therefore it is not likely that news would</p> <p>23 incorporate itself into the price of a security</p> <p>24 quickly and fully, how can you be certain that</p> <p>25 alleged corrective information causes a price</p>

20 (Pages 401 - 404)

<p style="text-align: right;">Page 405</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 drop?</p> <p>3 MR. BAKER: Objection to form. There</p> <p>4 is a bunch of assumptions in there that are not</p> <p>5 what we talked about before.</p> <p>6 The Witness: You're right. So --</p> <p>7 I'm sorry, Josh.</p> <p>8 MR. BAKER: If you understand the</p> <p>9 question, you can answer.</p> <p>10 THE WITNESS: No, no, Josh. I</p> <p>11 actually was going to say that.</p> <p>12 A. You've made a ton of assumptions in</p> <p>13 that question. And so, without exploring those</p> <p>14 assumptions more, I can't answer that question.</p> <p>15 It's only -- I only laugh because Josh -- as he</p> <p>16 was making that objection, I was like, no,</p> <p>17 there's a lot of assumption in there, so I can't</p> <p>18 answer that question.</p> <p>19 Q. Generally speaking, as an economist,</p> <p>20 do you believe that an event study can properly</p> <p>21 form the basis of a loss causation analysis if</p> <p>22 the market for a security is not efficient?</p> <p>23 A. That's -- that's not anything that I</p> <p>24 ever thought about. Sure, it's certainly</p> <p>25 possible that an event study can form the</p>	<p style="text-align: right;">Page 407</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 between the two and --</p> <p>3 THE STENOGRAPHER: I'm sorry, Josh.</p> <p>4 You're going to have to get closer to the</p> <p>5 microphone. I'm getting like every other word.</p> <p>6 Sorry about that.</p> <p>7 MR. BAKER: Sorry.</p> <p>8 I believe in Dr. Werner's previous</p> <p>9 answer, he described that there would be -- sort</p> <p>10 of mentioned that there would be a difference</p> <p>11 between inefficient and not efficient in various</p> <p>12 context and so that's what I'm trying to clarify</p> <p>13 to make sure we are all understanding and</p> <p>14 answering the same question.</p> <p>15 Q. If the market for a security is</p> <p>16 inefficient, are there any modifications to your</p> <p>17 event study methodology that would be required to</p> <p>18 accommodate for the fact that the market is</p> <p>19 inefficient?</p> <p>20 A. That's not something I've thought</p> <p>21 about as of today. I would need to think about</p> <p>22 that more.</p> <p>23 Q. Did you make any accommodations to</p> <p>24 your event study methodology in this case to</p> <p>25 accommodate for an inefficient market for the</p>
<p style="text-align: right;">Page 406</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 foundation of a damage analysis if a market for a</p> <p>3 stock is inefficient or not efficient, I should</p> <p>4 say.</p> <p>5 Q. Would you need to make any</p> <p>6 modifications to your event study methodology to</p> <p>7 accommodate for an inefficient, not efficient</p> <p>8 market?</p> <p>9 MR. BAKER: Objection to the form.</p> <p>10 So we're clear inefficient and not efficient are</p> <p>11 not necessarily the same thing.</p> <p>12 So are you asking -- and I just want</p> <p>13 to make sure I understand what you're asking.</p> <p>14 Are you asking in either situation, or are you</p> <p>15 saying that they're the same one?</p> <p>16 MR. ISAJIW: Again, Josh, I think</p> <p>17 objection to form is generally sufficient.</p> <p>18 But what I was trying to do was</p> <p>19 clarify for the Court Reporter the difference</p> <p>20 between efficient and inefficient by saying "not</p> <p>21 efficient."</p> <p>22 Q. So, to ask the question again --</p> <p>23 A. Well, go ahead.</p> <p>24 MR. BAKER: Just, you know, Mr.</p> <p>25 Werner's previous answer he differentiated</p>	<p style="text-align: right;">Page 408</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 FXCM notes?</p> <p>3 MR. BAKER: Object to form, assumes</p> <p>4 facts.</p> <p>5 A. Well, I --</p> <p>6 MR. BAKER: Assumes facts not in the</p> <p>7 record.</p> <p>8 Go ahead.</p> <p>9 A. I don't know what you mean by</p> <p>10 "modifications." Could you define those</p> <p>11 "modifications" that you're thinking of and maybe</p> <p>12 I would be able to give you an answer to that</p> <p>13 question?</p> <p>14 Q. When analyzing the event study in</p> <p>15 connection with your loss causation and damages</p> <p>16 conclusions, did you make any modifications as to</p> <p>17 the event study between the -- in connection with</p> <p>18 the FXCM common stock versus the FXCM notes?</p> <p>19 A. Again, without a definition of</p> <p>20 "modifications" or some notion of what you're</p> <p>21 talking about, I can't answer those questions or</p> <p>22 that individual question or the series of</p> <p>23 questions.</p> <p>24 Q. Again, we discussed it earlier, but</p> <p>25 the Court has rejected the conclusion that the</p>

<p style="text-align: right;">Page 409</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 FXCM notes traded in an in -- an efficient</p> <p>3 market, correct?</p> <p>4 A. Do you want to repeat that question?</p> <p>5 I heard an in and efficient and inefficient. So</p> <p>6 I don't understand the question.</p> <p>7 Q. The Court rejected your conclusion</p> <p>8 that the market for the FXCM notes was efficient,</p> <p>9 correct?</p> <p>10 A. I believe I've answered that question</p> <p>11 previously. So I defer to my earlier answer.</p> <p>12 Q. Did you modify your loss causation</p> <p>13 and damages analysis in connection with the notes</p> <p>14 in any way to accommodate for the Court's</p> <p>15 conclusion that the FXCM notes market was not</p> <p>16 efficient?</p> <p>17 MR. BAKER: Object to form.</p> <p>18 You can answer.</p> <p>19 A. Again, I don't know what you mean by</p> <p>20 "modify" and there was jumbling of inefficient</p> <p>21 and not efficient.</p> <p>22 If you want to repeat the question</p> <p>23 and explain what you mean by "modify," I'll make</p> <p>24 an attempt to answer the question.</p> <p>25 Q. I'm just asking if your analysis</p>	<p style="text-align: right;">Page 411</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 using the same term that the witness has</p> <p>3 repeatedly asked you to clarify without</p> <p>4 clarifying that term.</p> <p>5 MR. ISAJIW: Josh, your speaking</p> <p>6 objections are getting a little extreme.</p> <p>7 Q. If we -- did you -- is there anything</p> <p>8 in your loss causation report describing any type</p> <p>9 of change to your loss causation analysis to</p> <p>10 accommodate for the fact that the Court has made</p> <p>11 a ruling on market efficiency in connection with</p> <p>12 the notes in this matter?</p> <p>13 MR. BAKER: Objection to form.</p> <p>14 You can answer.</p> <p>15 A. I don't know how to answer that</p> <p>16 question.</p> <p>17 Q. Did the Court's ruling on market</p> <p>18 efficiency for the notes in this matter factor</p> <p>19 into your loss causation and damages analysis in</p> <p>20 connection with the notes?</p> <p>21 A. Did it factor in? I mean, I suppose</p> <p>22 to the extent that I knew about it, it may have</p> <p>23 factored in but, no, in general, no.</p> <p>24 Q. Okay. Let's take a look at Page 32</p> <p>25 of your report and the section entitled,</p>
<p style="text-align: right;">Page 410</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 required any modification to accommodate for the</p> <p>3 Court's ruling on market efficiency in connection</p> <p>4 with the notes in this matter?</p> <p>5 MR. BAKER: Object to form.</p> <p>6 And, Counsel, he said numerous times</p> <p>7 that he needs clarification of what</p> <p>8 "modifications" you're talking about. So, if you</p> <p>9 want to clarify something, he's asked that</p> <p>10 multiple times and you keep on using the same</p> <p>11 words. So it's understandably confusing.</p> <p>12 A. I refer to my previous answer on this</p> <p>13 question or on this topic.</p> <p>14 Q. Is there anything in your report</p> <p>15 describing a modification to your loss causation</p> <p>16 analysis in connection with the notes to</p> <p>17 accommodate for the Court's ruling on market</p> <p>18 efficiency for the notes in this matter?</p> <p>19 MR. BAKER: Same objection.</p> <p>20 A. Same answer.</p> <p>21 Q. I don't understand what the "same</p> <p>22 answer" is. This is a different question and</p> <p>23 it's yes or no.</p> <p>24 A. Same --</p> <p>25 MR. BAKER: Same objection. You're</p>	<p style="text-align: right;">Page 412</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 "Artificial Inflation Ribbon."</p> <p>3 A. Hold on. Let me get there.</p> <p>4 Okay. I'm sorry what page?</p> <p>5 Q. 32.</p> <p>6 A. 32. Okay, I'm there.</p> <p>7 Q. Paragraph 88 of this report you</p> <p>8 define "artificial inflation" as "the difference</p> <p>9 between what a securities price actually was at a</p> <p>10 point of time and what the price would have been</p> <p>11 absent the alleged fraud"; is that correct?</p> <p>12 A. You read that correctly.</p> <p>13 Q. Would you agree that the price of a</p> <p>14 security absent the artificial inflation impact</p> <p>15 of any alleged fraud is referred to generally as</p> <p>16 the "but for price"?</p> <p>17 A. I believe that's correct.</p> <p>18 Q. And in order to determine the but for</p> <p>19 price of a company's security, you need to</p> <p>20 determine what price would -- the security would</p> <p>21 have been had the company made the allegedly</p> <p>22 corrective disclosure at an earlier point in</p> <p>23 time; is that correct?</p> <p>24 A. I believe that statement is correct.</p> <p>25 Q. And assuming there is no confounding</p>

<p style="text-align: right;">Page 413</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D. 2 information, the residual price decline following 3 an allegedly corrective disclosure demonstrates 4 the level of artificial inflation in a security 5 immediately before that corrective disclosure; is 6 that right? 7 A. I'm sorry, could you repeat that 8 question please? 9 Q. Assuming there is no confounding 10 information, the residual price decline following 11 an allegedly corrective disclosure demonstrates 12 the level of artificial inflation in a security 13 immediately before that corrective disclosure; is 14 that correct? 15 A. At least. 16 Q. Would you agree that the level of 17 inflation in a security can change over time 18 during a class period? 19 A. As a general statement -- as a 20 general premise, that statement is correct. 21 Q. And, generally speaking, what are the 22 circumstances that could create a situation where 23 the level of inflation could change over time? 24 A. I mean, there's an expansive number 25 of answers. I mean, I could give you some</p>	<p style="text-align: right;">Page 415</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D. 2 itself indicate that the inflation amount 3 reflected in that price decline was constant 4 throughout the whole class period, does it? 5 A. So, I mean, there's all sorts of 6 assumptions that would go into giving you an 7 accurate answer to that statement. 8 But I think -- I mean, if you want -- 9 if you want to repeat the question, I can give 10 you a general answer to an extremely complex 11 question. But this won't -- as to the facts of 12 this case, I'm not sure if the answer would apply 13 one way or the other. 14 Q. Just -- I'm looking for just general 15 -- we'll get to the facts of this case in a 16 minute. 17 I'm just looking for a general answer 18 to the question of just because the price 19 declines at the end of multi-year class period 20 does not by itself indicate that the inflation 21 amount reflected in that price decline was 22 constant throughout that class period, would you 23 agree with that statement? 24 A. I think as a general statement, that 25 is correct.</p>
<p style="text-align: right;">Page 414</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D. 2 examples. One would be an additional corrective 3 disclosure. One could be a statement -- an 4 allegedly fraudulent statement that may serve to 5 increase the stock price or the inflation. I 6 mean, it's an extremely large question. But I 7 think those two are two examples of situations 8 where inflation might change during the class 9 period. 10 Q. And would you agree that any analysis 11 of inflation would need to explore those 12 potential circumstances to determine whether 13 inflation did, in fact, change over a class 14 period? 15 A. I think that statement's accurate. 16 Q. And would you agree that you can't 17 use a residual price decline on one day alone 18 without more information to measure artificial 19 inflation in the price of a security over a 20 multi-year period? 21 A. I don't know how to answer that 22 question. 23 Q. Let me ask it another way. 24 Just because the price declines at 25 the end of a multi-year class period, does not by</p>	<p style="text-align: right;">Page 416</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D. 2 Q. Is it possible that the substance of 3 information a company could or should have 4 disclosed to correct an allegedly fraudulent 5 misstatement could change during the class 6 period? 7 A. I'm sorry, so the question -- could 8 you re-read the question please? Because, I 9 think, it -- it either started with, could it -- 10 and, again, now we're -- when you ask questions 11 like "could," are we talking about likelihoods or 12 a tale possibility? 13 So go ahead and re-read the question. 14 I'll try to answer it, as you've stated it. 15 Q. It possible that the substance of 16 information a company could or should disclose to 17 correct an allegedly fraudulent misstatement 18 could change during the class period? 19 MR. BAKER: I'm going to object to 20 form. 21 But you can answer. 22 A. To the extent that anything is 23 possible, in the same sense that -- I mean, I 24 don't know -- I don't know what percentage to put 25 on this.</p>

<p style="text-align: right;">Page 417</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 I mean, is it possible Trump actually</p> <p>3 won the 2020 election? I suppose it's possible.</p> <p>4 Is it probable? No.</p> <p>5 So, again, it's an overly broad</p> <p>6 question. I mean, if you ask me if something is</p> <p>7 possible, anything is possible, right.</p> <p>8 Is it possible that my ceiling has a</p> <p>9 crack in it and there's about to be water flowing</p> <p>10 in on my head? It's possible. Probable, no.</p> <p>11 So I don't know how to answer these</p> <p>12 questions about -- that are vaguely asked. So,</p> <p>13 because if I -- when you ask questions like is it</p> <p>14 possible, if I say, ah, yes, it is possible, then</p> <p>15 all of the sudden it's like, oh, Dr. Werner said</p> <p>16 it's possible, right. But possible and probable</p> <p>17 are two different things.</p> <p>18 So, I mean, generally, anything is</p> <p>19 possible.</p> <p>20 Q. Would you agree that in conducting a</p> <p>21 loss causation analysis and damages analysis, you</p> <p>22 would need to explore the possibility that the</p> <p>23 substance of a potential corrective disclosure</p> <p>24 could change during the class period?</p> <p>25 A. As a general principle, yes.</p>	<p style="text-align: right;">Page 419</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 MR. BAKER: Objection to form.</p> <p>3 You can answer again.</p> <p>4 A. I don't know how to answer that</p> <p>5 question. Yeah, I don't know how to answer that</p> <p>6 question.</p> <p>7 Q. Is there any section in your loss</p> <p>8 causation report where you detail but for</p> <p>9 disclosures that you believe FXCM should have</p> <p>10 made during the class period?</p> <p>11 A. Well, so, ultimately, it's not up to</p> <p>12 me to decide what FXCM should have disclosed</p> <p>13 during the class period. The court will decide</p> <p>14 what FXCM should have disclosed during the class</p> <p>15 period and when they should have disclosed it.</p> <p>16 It seems to me, though, that the</p> <p>17 information contained in the corrective</p> <p>18 disclosure at the end of the class period as a</p> <p>19 general principle to the extent that FXCM was</p> <p>20 aware of any information associated with it</p> <p>21 should have been announced earlier.</p> <p>22 Q. And what information contained in the</p> <p>23 corrective disclosure do you believe FXCM should</p> <p>24 have made earlier?</p> <p>25 A. Well, again -- well, alright. Let's</p>
<p style="text-align: right;">Page 418</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 Q. Would you agree that you would also</p> <p>3 need to explore the possibility that the impact</p> <p>4 of any potential corrective disclosure would</p> <p>5 change over the course of a class period?</p> <p>6 A. Okay. Could you re-read that</p> <p>7 sentence please?</p> <p>8 Q. Would you agree that you would also</p> <p>9 need to explore the possibility that the impact</p> <p>10 of any potential corrective disclosure on the</p> <p>11 price of a security could change over the course</p> <p>12 of a class period?</p> <p>13 A. So, to quote you, possibly.</p> <p>14 Q. Okay. I want to focus on the</p> <p>15 disclosure assumptions in your analysis today.</p> <p>16 In your report, you do not list</p> <p>17 specific but for disclosures that FXCM should</p> <p>18 have made or when they should have made them; is</p> <p>19 that correct?</p> <p>20 A. Could you re-read the question</p> <p>21 please?</p> <p>22 Q. In your report, you do not list</p> <p>23 specific but for disclosures that FXCM should</p> <p>24 have made or when they could have made them; is</p> <p>25 that correct?</p>	<p style="text-align: right;">Page 420</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 go to their corrective disclosure.</p> <p>3 So -- and I'm referring now to</p> <p>4 Paragraph 26 of my report. "I believe Plaintiffs</p> <p>5 are saying that FXCM should have disclosed that</p> <p>6 retail customer's profits or losses would have an</p> <p>7 effect on FXCM interest because FXCM's role was</p> <p>8 merely as an agent or a credit intermediary."</p> <p>9 "They should have disclosed that they</p> <p>10 had a financial interest in the market maker that</p> <p>11 consistently won the largest share of FXCM's NDD</p> <p>12 trading volume."</p> <p>13 "Plaintiffs allege that they should</p> <p>14 have stated that Effex" -- that's, again, with</p> <p>15 capital E so we're talking about the company --</p> <p>16 was, "essentially, a front created by FXCM</p> <p>17 allowing for FXCM to hold positions opposite its</p> <p>18 customers and financially benefit at its</p> <p>19 customers expense in direct contravention to the</p> <p>20 company's representations to investors and its</p> <p>21 own customers of" conflict trading -- or</p> <p>22 "conflict-free trading on the NDD."</p> <p>23 "Plaintiffs allege that or suggest</p> <p>24 that FXCM should have announced or told the</p> <p>25 market that it had manipulated its NDD platform</p>

24 (Pages 417 - 420)

<p style="text-align: right;">Page 421</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D. 2 by putting Effex" -- again, that's with a capital 3 E -- "in front of independent market makers and 4 routing retail customer orders while also 5 permitting Effex to win all ties with other 6 market makers." 7 "FXCM provided Effex" -- again, with 8 a capital E -- "with a realtime view of price 9 quotations offered by other market makers and 10 added smaller markups to Effex" -- capital E -- 11 "prices than the prices provided by other market 12 makers. This way FXCM ensured that the bulk of 13 its order flow would go to Effex -- capital E -- 14 and generate profits for FXCM." 15 I believe that they believed -- 16 "Plaintiffs believe that Effex should not have 17 disguised its order flow payments, which no other 18 market maker was making to FXCM." 19 And I believe that it's alleged that 20 they should have corrected their financial 21 statements so they did not violate SEC 22 regulations and Generally Accepted Accounting 23 Principles for failing to disclose FXCM economic 24 interest in contractual and related-party 25 relationship with and control over Effex --</p>	<p style="text-align: right;">Page 423</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D. 2 expert opinion on whether FXCM should have 3 disclosed Effex by name as a liquidity provider 4 from which it received pay for flow payments? 5 A. Well, okay, so couple questions; by 6 name as opposed to what? 7 Q. As opposed to, I guess, a general 8 description of receiving pay for flow payments. 9 A. You mean alleged pay for flow 10 statements? 11 Q. I'm asking if you have formed an 12 opinion as to whether FXCM should have disclosed 13 Effex by name as a liquidity provider from which 14 it received pay for flow payments? 15 A. I don't have an opinion about that 16 one way or another. It's an extremely -- I'll 17 leave it at that. 18 Q. Do you have an opinion as to whether 19 or not FXCM should have disclosed that its 20 relationship with Effex was being investigated by 21 regulators? 22 A. So, again, to the extent you're 23 asking me should they have done that, that's not 24 in my purview. 25 Q. Do you have any opinion as to whether</p>
<p style="text-align: right;">Page 422</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D. 2 capital E -- during the class period. 3 Q. So those are Plaintiffs' allegations 4 in the Complaint. 5 And I'm just asking in connection 6 with your expert opinion in this matter, is there 7 any place in this report where you independently 8 opine what FXCM should have disclosed in 9 connection with each of those allegations or when 10 it could have disclosed them? 11 A. Do I independently do it? 12 I'm not sure how to answer that 13 question. 14 Q. In connection with your loss 15 causation and damages analysis, did you assume 16 that FXCM should have disclosed Effex by name as 17 a liquidity provider from which it received pay 18 for flow payments? 19 MR. BAKER: Objection to form. 20 A. Yeah, I -- I'm not sure how to answer 21 that question. I mean, ultimately, I think, 22 Plaintiffs will have to prove one way or another 23 what should have been disclosed and what period 24 of time it should have been disclosed. 25 Q. Sitting here today do you have an</p>	<p style="text-align: right;">Page 424</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D. 2 or not FXCM should have issued a different set of 3 financial statements consolidating Effex as a 4 variable interest entity? 5 A. Same answer to the previous question. 6 Q. Have you done any analysis as to 7 whether consolidating Effex into FXCM's financial 8 reporting would negatively affect FXCM's 9 financials? 10 A. As a GAAP principle? 11 Q. In any way. 12 Have you done any analysis? 13 A. I don't understand the question. 14 Q. Did you analyze in connection with 15 the scope of work for your retention as an expert 16 in this matter whether consolidating Effex into 17 FXCM's financial reporting would negatively 18 affect FXCM's financials? 19 A. Same answer. 20 Q. And, to be clear, the "same answer" 21 that you're referring to was, "that's not in my 22 purview"; is that correct? 23 A. I believe that's what I stated. But 24 if you would like the Court Reporter to read back 25 exactly what I state, I'm happy to have them do</p>

25 (Pages 421 - 424)

<p style="text-align: right;">Page 425</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 that. Or if you want to stipulate that's what I</p> <p>3 said, I won't disagree with you.</p> <p>4 Q. I believe that's what you said. And</p> <p>5 I just want to make sure, because we had a</p> <p>6 colloquy between your end.</p> <p>7 A. Well, okay. So now to the extent you</p> <p>8 "believe" that's what I said, you might as well</p> <p>9 just refer to what the Court Reporter wrote.</p> <p>10 Q. I am happy to do that.</p> <p>11 MR. ISAJIW: Ms. Wage, are you able</p> <p>12 to read back the previous answer to his</p> <p>13 questions?</p> <p>14 MR. BAKER: Which question?</p> <p>15 MR. ISAJIW: The one that he's</p> <p>16 referring to when he says, "same answer."</p> <p>17 THE STENOGRAPHER: Just give me a</p> <p>18 moment, so I can find it.</p> <p>19 MR. ISAJIW: Sure.</p> <p>20 MR. BAKER: He said the "same answer"</p> <p>21 a couple of times. Is he referring to the same</p> <p>22 one. But just, Silvia -- for the clear record,</p> <p>23 Peter, if there's a certain part of the draft</p> <p>24 like lines or pages that you can refer to, maybe</p> <p>25 that would help clear things up just as a...</p>	<p style="text-align: right;">Page 427</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 this. And I'm happy to accommodate you. Just</p> <p>3 let us know -- give us five minutes in advance.</p> <p>4 As long as there is no question pending, it</p> <p>5 should be fine.</p> <p>6 A. Okay. Well, when I hear the dogs</p> <p>7 barking, I'll know that he's about to leave.</p> <p>8 THE STENOGRAPHER: Okay. Every time</p> <p>9 you guys talk, I can't look at the transcript.</p> <p>10 So just pause for one second. I'm sorry.</p> <p>11 A. Well, okay, why don't we take a break</p> <p>12 while she's tracking down the answer, if that's</p> <p>13 okay.</p> <p>14 Q. I'm happy to go off the record.</p> <p>15 A. I would -- I'd like to take a break</p> <p>16 for a minute.</p> <p>17 Q. I'm happy to go off the record.</p> <p>18 A. Okay.</p> <p>19 THE VIDEOGRAPHER: The time is</p> <p>20 1:10 p.m. We're going off the record.</p> <p>21 (Recess taken 1:10 to 1:19 p.m.)</p> <p>22 (Whereupon, the questions and answers</p> <p>23 are read back as follows off he record:</p> <p>24 "Question: Do you have an opinion</p> <p>25 whether or not FXCM should have disclosed that</p>
<p style="text-align: right;">Page 426</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 MR. ISAJIW: I'm literally looking</p> <p>3 for clarity as well.</p> <p>4 MR. BAKER: Okay.</p> <p>5 A. Just if I may ask, at some point in</p> <p>6 the next hour, my sixth grade son is going to his</p> <p>7 graduation. I would like to pause the</p> <p>8 proceedings because it looks like I won't be</p> <p>9 making that graduation and, at least, wish him</p> <p>10 good luck; is that okay?</p> <p>11 Q. What time are you asking for a break?</p> <p>12 A. Well, I don't know what time he's</p> <p>13 leaving. The graduation starts at 11. So I</p> <p>14 don't know. We live ten minutes from the school.</p> <p>15 I don't know what his mom is thinking in regards</p> <p>16 to traffic, et cetera. I don't know.</p> <p>17 So, again, sometime in the next hour</p> <p>18 or, I guess, now 45 minutes --</p> <p>19 Q. I'm happy to accommodate --</p> <p>20 A. I'm sorry. You asked me a question</p> <p>21 and I'm explaining the answer.</p> <p>22 Within the next 51 minutes, I would</p> <p>23 like to take a break to wish my son well in his</p> <p>24 graduation of sixth grade.</p> <p>25 Q. Sure. It's the first I've heard of</p>	<p style="text-align: right;">Page 428</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 its relationship with Effex was being</p> <p>3 investigated by regulators?</p> <p>4 Answer: So, again, to the extent</p> <p>5 you're asking me should they have done that,</p> <p>6 that's not in my purview.</p> <p>7 Question: Do you have any opinion as</p> <p>8 to whether or not FXCM should have issued a</p> <p>9 different set of financial statements</p> <p>10 consolidating Effex as a variable interest</p> <p>11 entity?</p> <p>12 Answer: Same answer to the previous</p> <p>13 question.</p> <p>14 Question: Have you done any analysis</p> <p>15 as to whether consolidating Effex into FXCM's</p> <p>16 financial reporting would negatively affect</p> <p>17 FXCM's financials?</p> <p>18 Answer: As a GAAP principle?</p> <p>19 Question: In any way.</p> <p>20 Have you done any analysis?</p> <p>21 Answer: I don't understand the</p> <p>22 question.</p> <p>23 Question: Did you analyze in</p> <p>24 connection with the scope of work for your</p> <p>25 retention as an expert in this matter whether</p>

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<p style="text-align: right;">Page 429</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 consolidating Effex into FXCM's financial</p> <p>3 reporting would negatively affect FXCM's</p> <p>4 financials?</p> <p>5 Answer: Same answer.</p> <p>6 Question: And, to be clear, the</p> <p>7 'same answer' that you're referring to was,</p> <p>8 'that's not in my purview'; is that correct?</p> <p>9 Answer: I believe that's what I</p> <p>10 stated.")</p> <p>11 THE VIDEOGRAPHER: The time is</p> <p>12 1:19 p.m. We're going back on the record.</p> <p>13 Q. Dr. Werner, before we went off the</p> <p>14 record, I asked, did you analyze in connection</p> <p>15 with the scope of work for your retention as an</p> <p>16 expert in this matter whether consolidating Effex</p> <p>17 into FXCM's financial reporting would negatively</p> <p>18 affect FXCM's financials.</p> <p>19 A. Okay. And I don't understand the</p> <p>20 question.</p> <p>21 Q. Did you do any analysis in connection</p> <p>22 with the scope of work in this matter to</p> <p>23 determine in your expert opinion as to whether</p> <p>24 FXCM consolidating Effex into FXCM's financial</p> <p>25 reporting would negatively affect FXCM's</p>	<p style="text-align: right;">Page 431</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 A. Again, I don't understand the</p> <p>3 question. So, to the extent that I don't</p> <p>4 understand the question, I don't know -- I don't</p> <p>5 know how to give you an accurate answer one way</p> <p>6 or other. It's possible, in using that word that</p> <p>7 everyone loves to use in litigation. But as I</p> <p>8 sit here today, I don't know.</p> <p>9 Q. Do you understand what a variable</p> <p>10 interest entity is?</p> <p>11 A. Do I understand what a variable</p> <p>12 interest entity? You know, as I sit here today,</p> <p>13 I'm not sure.</p> <p>14 Q. Do you have any opinion as to whether</p> <p>15 FXCM should have issued a different set of</p> <p>16 financials consolidating Effex as a variable</p> <p>17 interest entity?</p> <p>18 MR. BAKER: Objection to form.</p> <p>19 A. Again, I don't understand the</p> <p>20 question. So I don't know how to give you an</p> <p>21 accurate answer.</p> <p>22 Q. In connection with your scope of work</p> <p>23 for the loss causation and damages report in this</p> <p>24 matter, did you analyze whether FXCM should have</p> <p>25 issued financial statements disclosing</p>
<p style="text-align: right;">Page 430</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 financials?</p> <p>3 A. To the extent that I don't understand</p> <p>4 the question, I can't answer it.</p> <p>5 Q. You don't understand whether you did</p> <p>6 that analysis?</p> <p>7 A. Well, I don't understand your</p> <p>8 question. So, if I don't know what you're</p> <p>9 talking about, I can't say one way or the other</p> <p>10 whether I did the analysis associated with your</p> <p>11 question.</p> <p>12 Q. Was it within your purview as an</p> <p>13 expert retained for loss causation and damages in</p> <p>14 this matter to analyze whether FXCM should have</p> <p>15 consolidated Effex in its financial reporting?</p> <p>16 A. So, again, to the extent that I don't</p> <p>17 understand the question, I don't know how to</p> <p>18 answer it.</p> <p>19 Q. Did -- in connection with your scope</p> <p>20 of work in this matter, did you do any analysis</p> <p>21 as to whether FXCM should have issued a different</p> <p>22 set of financial statements consolidating Effex</p> <p>23 as a variable interest entity?</p> <p>24 MR. BAKER: Objection to form.</p> <p>25 You can answer, if you're able.</p>	<p style="text-align: right;">Page 432</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 transactions with Effex as related-party</p> <p>3 transactions?</p> <p>4 A. Again, I don't understand the</p> <p>5 question. So, to the extent that I don't</p> <p>6 understand the question, I can't answer it.</p> <p>7 Q. And I'm just asking whether or not</p> <p>8 these are analyses you performed.</p> <p>9 So I'm not asking for any</p> <p>10 conclusions. I'm just asking if you have done</p> <p>11 these analyses.</p> <p>12 A. Right. And so, again, to the extent</p> <p>13 that I don't understand your questions, I don't</p> <p>14 know how to answer the -- I don't know how to</p> <p>15 answer them.</p> <p>16 Did I perform some analyses?</p> <p>17 Possible. But I don't understand the question</p> <p>18 so...</p> <p>19 I've given you the best answer I can.</p> <p>20 Q. Okay. Let's look at Paragraph 7 of</p> <p>21 your loss causation report again. Please let me</p> <p>22 know when you're there.</p> <p>23 A. I'm in the wrong report.</p> <p>24 Okay, Paragraph 7, I'm there.</p> <p>25 Q. In Paragraph 7 you say, "FXCM misled</p>

<p style="text-align: right;">Page 433</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 the market about the company's purported lack of</p> <p>3 conflict of interest with customer transactions</p> <p>4 on FXCM's NDD platform."</p> <p>5 Did I read that correctly?</p> <p>6 A. You did.</p> <p>7 Q. Are you offering an opinion that</p> <p>8 receiving payment for order flow created a</p> <p>9 conflict of interest with customer transactions</p> <p>10 on FXCM's NDD platform?</p> <p>11 A. I don't know how to answer that</p> <p>12 question. I mean, look, companies pay for order</p> <p>13 flow all the time. It's not just the question of</p> <p>14 paying for order flow. There's a whole miasma of</p> <p>15 things going on here.</p> <p>16 So I'm not quite sure how to answer</p> <p>17 that question without going into the entirety of</p> <p>18 this question.</p> <p>19 Q. Have you analyzed in connection with</p> <p>20 your work as an expert on this matter whether</p> <p>21 FXCM's relationship with Effex was detrimental or</p> <p>22 beneficial to its customers during the class</p> <p>23 period?</p> <p>24 A. Well, I mean, to the extent that I've</p> <p>25 previously during this deposition read analyst</p>	<p style="text-align: right;">Page 435</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 period than a principal or dealing desk model?")</p> <p>3 A. And I don't really understand the</p> <p>4 question, but I'll ask some clarifying questions</p> <p>5 in an attempt to answer that.</p> <p>6 So from whose perspective?</p> <p>7 Q. From anyone's perspective, were you</p> <p>8 asked to analyze that issue?</p> <p>9 A. Yeah, I don't know one way or the</p> <p>10 other, as I sit here today.</p> <p>11 Q. You go on to say in that paragraph</p> <p>12 that, "FXCM misled market participants about the</p> <p>13 extent of FXCM's exposure to regulatory</p> <p>14 scrutiny."</p> <p>15 Did I read that correctly?</p> <p>16 A. I'm sorry. We're back at Paragraph 7</p> <p>17 or 8?</p> <p>18 Q. Seven.</p> <p>19 A. (The witness reads to himself out</p> <p>20 loud.)</p> <p>21 Okay. So you stopped after</p> <p>22 "regulatory scrutiny"?</p> <p>23 Q. I did.</p> <p>24 A. Okay. Yeah, you read that correctly.</p> <p>25 Q. Are you offering an opinion regarding</p>
<p style="text-align: right;">Page 434</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 quotes that suggest that it was detrimental, I</p> <p>3 suppose it could -- certainly could be.</p> <p>4 Q. Was it within your purview as an</p> <p>5 expert to opine on whether FXCM's relationship</p> <p>6 with Effex was detrimental or beneficial to its</p> <p>7 customers during the class period?</p> <p>8 A. That's an interesting question. I'm</p> <p>9 not sure whether or not I've been asked to opine</p> <p>10 on that.</p> <p>11 Q. Was it within your purview to analyze</p> <p>12 whether an agency or no dealing desk model would</p> <p>13 be more beneficial to FXCM's business operations</p> <p>14 during the class period than a principal or</p> <p>15 dealing desk model?</p> <p>16 A. Could you re-read the question</p> <p>17 please?</p> <p>18 MR. ISAJIW: Ms. Wage, can you</p> <p>19 re-read the question please.</p> <p>20 (Whereupon, the question is read back</p> <p>21 as follows:</p> <p>22 "Question: Was it within your</p> <p>23 purview to analyze whether an agency or no</p> <p>24 dealing desk model would be more beneficial to</p> <p>25 FXCM's business operations during the class</p>	<p style="text-align: right;">Page 436</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 FXCM's exposure to regulatory scrutiny in this</p> <p>3 matter?</p> <p>4 A. I don't understand the question. My</p> <p>5 opinions are laid out here in my report. I -- so</p> <p>6 I don't know.</p> <p>7 Q. Do you have any expertise that would</p> <p>8 allow you to opine on the potential exposure to</p> <p>9 regulatory scrutiny for FXCM?</p> <p>10 MR. BAKER: Objection to form.</p> <p>11 A. Define "expertise."</p> <p>12 Am I familiar with it, the topic?</p> <p>13 Yeah, I'm familiar with the topic. I don't know</p> <p>14 if that makes me an expert. I mean, just in</p> <p>15 general I understand what regulators do to</p> <p>16 financial firms and the impact that those</p> <p>17 regulators sometimes have on those financial</p> <p>18 firms. So I don't know exactly what you're</p> <p>19 asking here or how you're defining expert.</p> <p>20 Q. In the manner in which you define</p> <p>21 "expertise," are you offering an opinion as to</p> <p>22 the exposure to regulatory scrutiny of FXCM in</p> <p>23 this matter?</p> <p>24 MR. BAKER: Objection to form.</p> <p>25 A. Again, I don't understand the</p>

<p style="text-align: right;">Page 437</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 question.</p> <p>3 Q. Later in that paragraph you state</p> <p>4 that "market participants were misled about the</p> <p>5 viability and sustainability of FXCM's business</p> <p>6 model."</p> <p>7 What "business model," specifically,</p> <p>8 are you referring to there?</p> <p>9 A. FXCM's business model.</p> <p>10 Q. Are you referring to, for instance,</p> <p>11 the no dealing desk, forex trading generally,</p> <p>12 their operations in the United States, their</p> <p>13 operations globally? Which specific "business</p> <p>14 model" are you referring to?</p> <p>15 A. Well, those are all part of its</p> <p>16 business model, correct?</p> <p>17 Q. So you are referring to all of those</p> <p>18 when you say that "market participants were</p> <p>19 misled about the viability and sustainability of</p> <p>20 FXCM's business model"?</p> <p>21 A. I believe "business model" -- I mean,</p> <p>22 I'm using that in the general sense of "business</p> <p>23 model." I mean, does that include FXCM's claim</p> <p>24 that they were -- that they had an NDD platform?</p> <p>25 That certainly would be one of them. That's</p>	<p style="text-align: right;">Page 439</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 Q. Are you offering an opinion about the</p> <p>3 "viability and sustainability" of FXCM's overall</p> <p>4 operations in forex trading generally?</p> <p>5 MR. BAKER: Objection to form.</p> <p>6 A. No. I mean, again, I refer back to</p> <p>7 those investment analysts quotes that I referred</p> <p>8 to earlier. I'm happy to read them again.</p> <p>9 That's my understanding of the firm's "viability</p> <p>10 and sustainability." Or that, certainly,</p> <p>11 represents my understanding of their "viability</p> <p>12 and sustainability."</p> <p>13 Q. Other than by reference to the</p> <p>14 analyst quotes, do you have any personal</p> <p>15 expertise in forex trading sufficient for you to</p> <p>16 determine independently the sustainability of</p> <p>17 FXCM's business model, generally?</p> <p>18 MR. BAKER: Objection to form.</p> <p>19 A. Again, I don't know what you mean by</p> <p>20 "expertise." I mean, I TA'ed a course on</p> <p>21 international finance in graduate schools by one</p> <p>22 of the foremost international finance experts</p> <p>23 where we dealt with foreign exchange markets. I</p> <p>24 don't know if that makes me an expert. I</p> <p>25 certainly, teach about foreign exchange or FX</p>
<p style="text-align: right;">Page 438</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 certainly part -- my understanding is that's part</p> <p>3 of their "business model" among other things.</p> <p>4 Q. Are you offering an opinion about the</p> <p>5 viability of FXCM's no dealing desk in connection</p> <p>6 with your scope of engagement in this matter?</p> <p>7 A. I don't understand the question. I</p> <p>8 mean, they didn't have -- what do you mean "the</p> <p>9 viability"?</p> <p>10 My understanding is they didn't have</p> <p>11 a no dealing desk.</p> <p>12 Q. I'm just trying to get a sense of</p> <p>13 which "business model" and what specific</p> <p>14 "business model" you're discussing in your</p> <p>15 report.</p> <p>16 A. I mean, I gave you certainly an</p> <p>17 example of what I mean by their "business model."</p> <p>18 That was one part of it.</p> <p>19 Q. Are you --</p> <p>20 A. I don't know -- I don't know if their</p> <p>21 "business model" is to spinoff a company that,</p> <p>22 basically, appeared to be kicking back profits to</p> <p>23 them. I'm not sure if I meant that that was part</p> <p>24 of their "business model" or not, as I sit here</p> <p>25 today among other things.</p>	<p style="text-align: right;">Page 440</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 trading in my macroeconomics class. I don't know</p> <p>3 if that makes me an expert.</p> <p>4 I mean, I suppose if I'm asked,</p> <p>5 ultimately, it will be up to the Court to decide</p> <p>6 whether or not I'm an expert, if I am, in fact,</p> <p>7 asked that question by the Court.</p> <p>8 Q. In connection with your loss</p> <p>9 causation and damages report, do you believe that</p> <p>10 you've been retained as an expert concerning</p> <p>11 forex trading and the sustainability of FXCM's</p> <p>12 business model?</p> <p>13 A. I believe that in this matter -- and</p> <p>14 I'm now reading from Paragraph 4 of my report.</p> <p>15 "I was asked by lead Counsel for the Plaintiffs</p> <p>16 to determine whether the losses of the Plaintiffs</p> <p>17 and the class were caused by Defendant's alleged</p> <p>18 misrepresentations and omissions (i.e., loss</p> <p>19 causation) as described in the third amended</p> <p>20 consolidated securities class action complaint</p> <p>21 dated April 17, 2020 (Complaint).</p> <p>22 Furthermore, I was asked to quantify</p> <p>23 the loss, if any, due to the Defendant's alleged</p> <p>24 misrepresentations and omission of both a per</p> <p>25 share and per note basis (i.e., damages)."</p>

<p style="text-align: right;">Page 441</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 That's what I was retained to do in this matter.</p> <p>3 Q. Okay. Further in Paragraph 7 you</p> <p>4 say, "The alleged fraud also concealed from the</p> <p>5 market the inextricable ramifications that would</p> <p>6 manifest upon corrective disclosure."</p> <p>7 Earlier we discussed your view of</p> <p>8 "the inextricable ramifications."</p> <p>9 What I want to know what is your</p> <p>10 basis for contending those ramifications were</p> <p>11 "inextricable"?</p> <p>12 A. All the material that I reviewed in</p> <p>13 forming my opinions, all of my opinions in this</p> <p>14 matter.</p> <p>15 Q. And which "ramifications,"</p> <p>16 specifically, are you referring to as the</p> <p>17 "inextricable ramifications"?</p> <p>18 A. The same ones I referred to when you</p> <p>19 asked me this question earlier.</p> <p>20 Q. So the myriad of things defined --</p> <p>21 explained, sorry, in the analyst report quotes</p> <p>22 that you read earlier; is that correct?</p> <p>23 MR. BAKER: Objection.</p> <p>24 A. Well, I'm not sure that I would use</p> <p>25 the word "myriad." That's your qualification of</p>	<p style="text-align: right;">Page 443</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 Q. What corrective information do you</p> <p>3 believe could have been disclosed on March 15th,</p> <p>4 2012?</p> <p>5 A. Well, I believe that Plaintiffs are</p> <p>6 contending that whatever information was</p> <p>7 disclosed on the February 7th, '17 -- 2017 could</p> <p>8 have been disclosed at the beginning of the class</p> <p>9 period.</p> <p>10 Q. And have you independently analyzed</p> <p>11 that contention and formed a belief as to whether</p> <p>12 or not that is accurate?</p> <p>13 A. Well, I have not seen any evidence to</p> <p>14 indicate that that assumption is inaccurate.</p> <p>15 Q. Do you have an opinion as to what</p> <p>16 specific corrective information could have been</p> <p>17 disclosed to the market on March 15th, 2012?</p> <p>18 A. I believe Plaintiffs are maintaining</p> <p>19 that all information -- the corrective</p> <p>20 disclosures that occurred at the end of the class</p> <p>21 period could have occurred at the beginning of</p> <p>22 the class period.</p> <p>23 Q. Is it your opinion that had that</p> <p>24 information been disclosed on March 15th, 2012</p> <p>25 that the stock would have reacted in the same way</p>
<p style="text-align: right;">Page 442</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 what I read to you earlier.</p> <p>3 So, to the extent that I'm not sure I</p> <p>4 agree with your representation or the way you</p> <p>5 structured your sentence, I'm not sure I can</p> <p>6 answer that question. But I believe to the</p> <p>7 extent that you've asked this question</p> <p>8 previously, without injecting additional</p> <p>9 adjectives or nouns, maybe a noun, I've answered</p> <p>10 the question. So I can refer to that.</p> <p>11 Q. In your view in this case, could the</p> <p>12 same corrective disclosure that was made on</p> <p>13 February 7th, 2017 have been made on March 15th,</p> <p>14 2012, which is the first day of the class period?</p> <p>15 MR. BAKER: Objection to form.</p> <p>16 A. Could have a corrective disclosure</p> <p>17 have been made?</p> <p>18 THE WITNESS: I'm sorry, Josh.</p> <p>19 MR. BAKER: It assumes facts not in</p> <p>20 the record.</p> <p>21 You can answer.</p> <p>22 A. Yeah. Could it have happened? I</p> <p>23 don't know. I mean, it's another really broad</p> <p>24 question.</p> <p>25 Is it possible? Sure, it's possible.</p>	<p style="text-align: right;">Page 444</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 as it did in February of 2017?</p> <p>3 A. What do you mean by "the same way"?</p> <p>4 Q. Would the stock have had the same</p> <p>5 price reaction as it did upon revelation of the</p> <p>6 alleged corrective disclosure in February of 2017</p> <p>7 if that alleged corrective disclosure was</p> <p>8 disclosed on March 15th, 2012?</p> <p>9 MR. BAKER: Objection to form.</p> <p>10 A. I mean, to all -- based on all the</p> <p>11 evidence I reviewed, it would have, at least,</p> <p>12 fallen by that amount.</p> <p>13 Q. And what information do you believe</p> <p>14 would have caused it to fall by that amount if</p> <p>15 the corrective disclosure was made on March 15th,</p> <p>16 2012?</p> <p>17 A. Well, okay. So, again, let's first</p> <p>18 -- I just said "at least," correct? Did you miss</p> <p>19 that part of my answer?</p> <p>20 Because I want to make sure that it's</p> <p>21 understood that I said it would, "at least," fall</p> <p>22 to that amount at the beginning of the class</p> <p>23 period.</p> <p>24 What information? All the</p> <p>25 information I reviewed in forming my opinions in</p>

<p style="text-align: right;">Page 445</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 this case.</p> <p>3 Q. Do you believe that if FXCM disclosed</p> <p>4 its relationship with Effex on March 15th, 2012</p> <p>5 that the stock would have had the same price</p> <p>6 reaction as it did upon the corrective</p> <p>7 disclosures in February of 2017?</p> <p>8 A. Well, I refer to my definition or my</p> <p>9 discussion of these things as being -- as having</p> <p>10 "inextricable ramification." So, if that</p> <p>11 specific component had been told to the market on</p> <p>12 that date without the regulators going ahead and</p> <p>13 saying, you can no longer operate in the US -- is</p> <p>14 that the hypothetical question you want me to</p> <p>15 answer?</p> <p>16 Q. Yes.</p> <p>17 A. Okay. And nothing about their</p> <p>18 reputation or what the analyst thought about what</p> <p>19 it would do to their business?</p> <p>20 Q. I'm asking you for your opinion as to</p> <p>21 what the effect of that disclosure would have</p> <p>22 been made on March 15th, 2012.</p> <p>23 A. And, again, I -- if you're talking</p> <p>24 about the corrective disclosure and the -- as</p> <p>25 well as the response by market analysts, as well</p>	<p style="text-align: right;">Page 447</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 I'm not sure you can disaggregate that, that</p> <p>3 particular statement, because all of these things</p> <p>4 are woven together. Look, if they hadn't lied</p> <p>5 about it, you know, it's not -- presumably, the</p> <p>6 regulators may not have come down on them that</p> <p>7 hard and market participants wouldn't have said,</p> <p>8 oh, these guys are teetering on the edge of</p> <p>9 bankruptcy or they may not be solvent.</p> <p>10 So I'm not -- as I sit here today,</p> <p>11 I'm not quite sure how to parse that out.</p> <p>12 Q. Let's look at the CFTC and NFA</p> <p>13 settlement for a minute.</p> <p>14 And correct me if I'm wrong, but</p> <p>15 these settlements are the basis in your view of</p> <p>16 the corrective disclosure, which occurred on</p> <p>17 February 6th, 2017; is that correct?</p> <p>18 A. I don't understand. What do you mean</p> <p>19 by "the basis"?</p> <p>20 Q. You identified the public disclosure</p> <p>21 contained in FXCM's settlements with the CFTC and</p> <p>22 the NFA on February 6th, 2017 as the corrective</p> <p>23 disclosure in this case; isn't that right?</p> <p>24 A. Where are you looking at?</p> <p>25 Q. I'm not looking at anything in</p>
<p style="text-align: right;">Page 446</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 as the government saying or the CFTC saying, you</p> <p>3 can no longer operate in the US, it would have --</p> <p>4 I believe it would have, at least, caused that</p> <p>5 amount of price decline. But hence, again, the</p> <p>6 word "inextricable."</p> <p>7 Oh, I left out FXCM lying about the</p> <p>8 fact that they had a no deal desk. Because I</p> <p>9 think the lying actually played a part in the</p> <p>10 analyst -- I'm sorry, in the regulatory body's</p> <p>11 decisions.</p> <p>12 Q. Did you analyze whether the</p> <p>13 revelation of the relationship between Effex and</p> <p>14 FXCM by itself, if that was the disclosed in</p> <p>15 March 15th, 2012, did you analyze whether the</p> <p>16 price reaction to the stock would have been the</p> <p>17 same as it was in February 2017, just that one</p> <p>18 piece of information?</p> <p>19 A. So, again, so just that they had a</p> <p>20 relationship, not that they were possibly trading</p> <p>21 in front of their clients and that regulators</p> <p>22 would -- because they had been lying to the</p> <p>23 market would shut them down or not allow them to</p> <p>24 operate in the US?</p> <p>25 I'm not sure that as a standalone --</p>	<p style="text-align: right;">Page 448</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 particular.</p> <p>3 I'm just -- do you disagree with</p> <p>4 that?</p> <p>5 A. I don't disagree or agree one way or</p> <p>6 the other. As I sit here, I don't recall exactly</p> <p>7 that that's exactly verbatim what I said.</p> <p>8 Q. I'm not asking for --</p> <p>9 A. So if you want to point me to the</p> <p>10 part in the report or I can go to the part in the</p> <p>11 report where I talk about the corrective</p> <p>12 disclosure.</p> <p>13 Q. As a general -- as a general matter,</p> <p>14 do you disagree that the information that your</p> <p>15 analysis assumes is the corrective disclosure is</p> <p>16 taken from the information contained in the CFTC</p> <p>17 and NFA settlements in February of 2017?</p> <p>18 MR. BAKER: Objection.</p> <p>19 A. Again, I refer to Paragraph 7 of my</p> <p>20 report. "The alleged misrepresentations and</p> <p>21 omissions caused the price of the Effex FXCM</p> <p>22 stock and FXCM notes to be artificially inflated</p> <p>23 over the course of the class period. FXCM misled</p> <p>24 the market about the company's purported lack of</p> <p>25 conflict of interest with customer transactions</p>

<p style="text-align: right;">Page 449</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D. 2 on FXCM's NDD platform. This in turn misled 3 market participants about the extent of FXCM's 4 exposure to regulatory scrutiny, the viability 5 and sustainability of its business model and 6 FXCM's future profitability. The alleged fraud 7 also concealed from the market the inextricable 8 ramifications that would manifest upon corrective 9 disclosures all of which in turn" -- excuse me -- 10 "caused the price of FXCM securities to be 11 artificially inflated." 12 Q. And, again, do you disagree that the 13 alleged corrective disclosure, the information 14 that was allegedly corrective disclosure, came 15 from the CFTC and NFA settlements in February of 16 2017? 17 MR. BAKER: Objection to form. 18 A. Well, let's go to Paragraph 17 and 19 read exactly what I say. 20 "On February 6, 2017, the US 21 Commodities Future Trades Commission (CFTC) found 22 that FXCM, 'engaged in false and misleading 23 solicitations of FXCM retail foreign exchange 24 (forex) customers.' While FXCM told its retailer 25 customers that it had no conflict of interest and</p>	<p style="text-align: right;">Page 451</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D. 2 A. I believe so. 3 Q. Have you heard the term "no admit no 4 deny settlement" before? 5 A. As a general principle, yes. 6 Q. And what does that mean to you? 7 A. It means that you don't admit to any 8 wrongdoings. Nor do you deny any wrongdoing. 9 Q. Are you aware that FXCM settlements 10 with the CFTC and the NFA were "no admit no deny 11 settlements"? 12 A. Again, I'm happy to look at them. I 13 mean, most of these settlements are that way. It 14 doesn't mean you didn't do anything wrong. 15 Q. Sitting here today are you aware that 16 these particular settlements on which you base 17 your analysis were "no admit no deny 18 settlements"? 19 A. Well, let's look at the settlement 20 agreement. 21 MR. BAKER: Objection. 22 A. So, I guess, my son left without me. 23 MR. ISAJIW: Evan, can you introduce 24 the February 6th, 2017 CFTC order and let me know 25 what number that would be.</p>
<p style="text-align: right;">Page 450</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D. 2 that it acted only as a credit intermediary on 3 its 'no dealing desk' platform, FXCM 'had an 4 undisclosed interest' in the market maker that 5 consistently 'won' the largest share of FXCM's 6 trading volume,'" end quote. 7 "The market makers 'shared most of 8 its trading profits with FXCM." From 2010 and 9 through 2014, FXCM received, approximately, 10 \$77 million from the market maker, which FXCM did 11 not disclose to its customers. The CFTC order 12 required FXCM to pay a civil monetary penalty of 13 \$7 million and to cease and desist from further 14 violations of the Commodity Exchange Act and CFTC 15 regulations as charged." 16 Q. So, the February 6th, 2017 settlement 17 with the CFTC that you just referred to, are you 18 aware that that settlement was a negotiated 19 agreement between FXCM and the CFTC? 20 A. I don't know if I knew that one way 21 or the other as I sit here. But I'm happy -- do 22 you just want to introduce those agreements as 23 evidence and we can review them? 24 Q. Have you reviewed them in connection 25 with your work before?</p>	<p style="text-align: right;">Page 452</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D. 2 (Deposition Exhibit Werner 12, Order 3 Instituting Proceedings Pursuant to Sections 6(c) 4 and 6(d) of the Commodity Exchange Act, Making 5 Findings, and Imposing Remedial Sanctions, was 6 marked for identification.) 7 MS. ENNIS: It's loaded as 8 Exhibit 12. 9 Q. Dr. Werner, let me know when you have 10 access to Exhibit 12. 11 A. Okay, I've got it. 12 Q. On Page 1 under paragraph numbered 13 Roman Numeral II -- first of all, for the record, 14 Exhibit 12 is the Forex Capital Markets LLC, FXCM 15 Holdings LLC, Dror Niv and William Ahdout, CFTC 16 Order Instituting Proceedings Pursuant to 17 Section 60 and 60 of the Commodity Exchange Act 18 Making Findings and Imposing Remedial Sanctions. 19 Under Roman Numeral II, first 20 paragraph it says, "In anticipation of the 21 institution of administrative proceedings, 22 Respondents have submitted an offer of 23 settlement, which the Commission has determined 24 to accept. Without admitting or denying the 25 findings or conclusions herein, Respondents</p>

<p style="text-align: right;">Page 453</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 consent to the entry and acknowledge service of</p> <p>3 this order instituting proceedings pursuant to 60</p> <p>4 and 6D of the Commodity Exchange Act, making</p> <p>5 findings and imposing remedial sanctions."</p> <p>6 It says, "without admitting or</p> <p>7 denying the findings or conclusions herein."</p> <p>8 Were you aware of that condition --</p> <p>9 A. Yeah, I mean, that's pretty</p> <p>10 boilerplate language.</p> <p>11 Q. Let me ask the question.</p> <p>12 A. Oh, I'm sorry. Well, you just asked</p> <p>13 me if I was aware of it, right, so I answered</p> <p>14 that question. But if I interrupted you, I</p> <p>15 apologize. Go ahead.</p> <p>16 Q. In connection with -- prior to</p> <p>17 drafting your loss causation report, were you</p> <p>18 aware that these were "no admit no deny</p> <p>19 settlements"?</p> <p>20 A. I don't know one way or the other, as</p> <p>21 I sit here today.</p> <p>22 Q. Are you aware --</p> <p>23 A. But that having been said -- whoa,</p> <p>24 whoa, whoa, whoa, whoa.</p> <p>25 That having been said, right, that</p>	<p style="text-align: right;">Page 455</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 Q. Are you aware of any other court that</p> <p>3 has already determined that the allegations in</p> <p>4 the CFTC and NFA settlements are true?</p> <p>5 A. I don't believe so.</p> <p>6 Q. Are you aware that the CFTC itself</p> <p>7 has taken the position that allegations in "no</p> <p>8 admit no deny" settlements are not evidence of</p> <p>9 fraud?</p> <p>10 A. Am I familiar with that type of</p> <p>11 boilerplate language?</p> <p>12 Q. No. I'm asking you if you're --</p> <p>13 A. At the same time -- whoa, whoa, whoa,</p> <p>14 whoa, whoa.</p> <p>15 At the same time if you're going to</p> <p>16 go ahead and do that, I don't understand why you</p> <p>17 would agree to close down your US trading</p> <p>18 operations.</p> <p>19 Q. But you do understand that you would</p> <p>20 agree to do that, it was a negotiated resolution</p> <p>21 to a regulatory inquiry, correct?</p> <p>22 A. Right. And I'm saying that me as a</p> <p>23 normal person, if I hadn't done anything wrong,</p> <p>24 it occurs to me that I probably wouldn't have</p> <p>25 agreed to shut down my business.</p>
<p style="text-align: right;">Page 454</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 type of language is boilerplate. So let's go</p> <p>3 back to the -- let's go to the section of this</p> <p>4 proceeding where they talk about what they're</p> <p>5 going to do in response to neither admitting or</p> <p>6 denying any wrongdoing.</p> <p>7 "Respondents and their successors and</p> <p>8 assigns shall comply with the following</p> <p>9 conditions and undertaking set forth in the</p> <p>10 offering."</p> <p>11 You know what, I'm just going to</p> <p>12 refer to Subsection C as well as Point 4 in what</p> <p>13 is referred to as Werner Exhibit 12 as to what</p> <p>14 informs my opinion about the language of "no deny</p> <p>15 no admit" and whether it's industry practice to</p> <p>16 include that type of boilerplate language in</p> <p>17 these types of agreements.</p> <p>18 Q. Are you aware that no court has</p> <p>19 determined that the CFTC and NFA allegations are</p> <p>20 true?</p> <p>21 A. I'm not sure whether or not -- I</p> <p>22 don't know whether or not the courts have</p> <p>23 determined that or not. I mean, presumably, that</p> <p>24 would be something that the Court would determine</p> <p>25 here in this matter.</p>	<p style="text-align: right;">Page 456</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 Q. In your experience, do you believe a</p> <p>3 company could enter a settlement with its</p> <p>4 regulator for business reasons?</p> <p>5 A. Is it possible? Certainly, it's</p> <p>6 possible.</p> <p>7 Q. And would you agree that regulatory</p> <p>8 penalties for any alleged violations could vary</p> <p>9 depending on several factors in connection with a</p> <p>10 negotiation with regulators?</p> <p>11 A. As a general principle, yeah.</p> <p>12 Q. Okay. Do you know what portion of</p> <p>13 FXCM's gross revenue was generated by its US</p> <p>14 business in 2016 and early 2017?</p> <p>15 A. I believe it was somewhere between 20</p> <p>16 and 30 percent. I might be off on those numbers.</p> <p>17 Q. And do you know whether FXCM's net</p> <p>18 revenue benefitted from the closure of its US</p> <p>19 business?</p> <p>20 MR. BAKER: Objection to form.</p> <p>21 A. "Benefitted" as in increased?</p> <p>22 Q. Improved.</p> <p>23 A. I'm sorry, "improved"?</p> <p>24 Q. Yes.</p> <p>25 A. Hmm interesting question; not as I</p>

<p style="text-align: right;">Page 457</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D. 2 sit here today. 3 Q. Are you aware that FXCM continues to 4 operate as an online forex broker outside of the 5 United States? 6 A. Yeah, I believe, after it declared 7 bankruptcy, it may have restructured. And so, to 8 the best of my knowledge, it's still operational. 9 I know I looked for financials, its 10 current financial and because it's private 11 entity, I was unable to find them, which is a 12 long way of saying, yes, to your -- or answering 13 yes to your question but giving it a little 14 context. 15 Q. So the current financials were not a 16 component of your loss causation and damages 17 analysis as expressed in your report? 18 MR. BAKER: Objection. 19 A. To the extent that I haven't seen 20 them, the current financials -- I don't believe 21 I've seen any of their current financials. And 22 so, to the extent I haven't seen them, I don't 23 believe that they played any part in the 24 formation of my opinions in this report. 25 Q. Let's take a look at Paragraph 91 of</p>	<p style="text-align: right;">Page 459</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D. 2 Q. In your opinion, at what point in 3 time between March 15th, 2012 and February 16th, 4 2017 was it foreseeable that FXCM would settle 5 the CFTC investigation by agreeing to pay a fine 6 and withdraw from the US market? 7 MR. BAKER: Objection to form. 8 A. Right. So, to the extent that you're 9 talking about something that hypothetically would 10 have occurred in 2012, I haven't seen any 11 evidence that indicates to me that that would not 12 have been their price reaction or, at least, the 13 price reaction throughout the entire class 14 period, if that statement -- if these statements 15 or these clarifications had become known at the 16 beginning of the class period. 17 Q. That's not -- 18 A. And I have reviewed all the -- well, 19 I have reviewed all the data or all of the 20 documents associated with this case, at least, to 21 the extent that they're reflected in my three 22 reports. 23 Q. That's not the question I asked. 24 I asked, in your opinion, at what 25 point between March 15th, 2012 and February 6th,</p>
<p style="text-align: right;">Page 458</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D. 2 your report. Let me know when you're there. 3 A. Okay, I'm there. 4 Q. In Paragraph 91 you state, "The 5 residual decline following the corrective 6 disclosure through which the" -- 7 A. Okay. We're in the middle. Okay, go 8 ahead. 9 Q. Yes. 10 (Continuing.) "Through which the 11 market learned the truth about the company's 12 purportedly conflict free agency model and the 13 ramifications associated therewith, including the 14 company's business model would no longer be 15 sustainable and FXCM would be subject to 16 regulatory repercussions equals the diminution of 17 value stemming from the market's new 18 understanding of the truth of the company's 19 exposure to regulatory scrutiny, systemic shocks 20 to its business model, its future profitability 21 and the market's prior underestimation of the 22 risks of foreseeable ramifications had the truth 23 been disclosed." 24 Did I read that correctly? 25 A. You did.</p>	<p style="text-align: right;">Page 460</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D. 2 27 [sic] was it foreseeable that FXCM would 3 settle the CFTC investigation by agreeing to pay 4 a fine and withdraw from the US market? 5 MR. BAKER: Objection to form. 6 A. Yeah, I mean, I refer to my previous 7 answer. 8 Q. Did you analyze -- 9 A. I don't understand -- I believe 10 that's responsive to your question. 11 Q. Did you analyze at what date in 12 between the start of the class period and the end 13 of the class period it would have been 14 foreseeable for FXCM to settle the investigations 15 by agreeing to pay a fine and withdraw from the 16 US market? 17 MR. BAKER: Objection to form. 18 A. I believe Plaintiffs contended it 19 would have been foreseeable as of the date of the 20 beginning of the class period. And I see no 21 evidence to suggest otherwise. 22 Q. So the class period began March 15th, 23 2012, correct? 24 A. That is correct. 25 Q. And according to your report,</p>

<p style="text-align: right;">Page 461</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 Paragraph 35E --</p> <p>3 A. Hold on; 35E. Ah, yes.</p> <p>4 Q. The NFA investigation started, at</p> <p>5 least, by the beginning of April 2014; is that</p> <p>6 correct?</p> <p>7 A. "At least," yeah, certainly, "at</p> <p>8 least."</p> <p>9 Q. And if you look at your report --</p> <p>10 A. Oh, wait, I'm sorry. Wait. Whoa,</p> <p>11 whoa, whoa, whoa.</p> <p>12 I mean, "at least," yeah, it</p> <p>13 certainly could have happened prior to that.</p> <p>14 Q. What is your understanding of the</p> <p>15 date of when the NFA investigation began? Was it</p> <p>16 on or about April of 2014?</p> <p>17 A. I don't -- I don't know one way or</p> <p>18 the other. I just know that FXCM was receiving</p> <p>19 payment for order flow with an entity that was</p> <p>20 directly related to it as of 2010. So, I mean,</p> <p>21 as to when the violation or the alleged violation</p> <p>22 began occurring as early as 2010.</p> <p>23 Q. And I'm asking as to when the</p> <p>24 investigations began.</p> <p>25 A. Yeah, as I sit here today, I don't</p>	<p style="text-align: right;">Page 463</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 October 15, 2014.</p> <p>3 Q. Okay. So assuming that the NFA</p> <p>4 investigation started in the beginning of</p> <p>5 April 2014 and the CFTC investigation began at</p> <p>6 the end of 2014 -- let me break that up.</p> <p>7 The NFA investigation started at the</p> <p>8 beginning of April 2014.</p> <p>9 So that investigation was going on</p> <p>10 for nearly three years before the end of the</p> <p>11 class period in February 2017; is that correct?</p> <p>12 MR. BAKER: Objection to form,</p> <p>13 assumes facts not in the record.</p> <p>14 A. Yeah, I mean, based on your</p> <p>15 representation, I -- I mean, I'll assume it's</p> <p>16 correct but...</p> <p>17 Q. And assuming the CFTC investigation</p> <p>18 began at the end of 2014, that would have been</p> <p>19 ongoing for more than two years before the</p> <p>20 completion of the class period in February 2017;</p> <p>21 is that correct?</p> <p>22 MR. BAKER: Same objection.</p> <p>23 A. I mean, again -- I'd use the same</p> <p>24 answer as the other question just changing the</p> <p>25 date in the entity.</p>
<p style="text-align: right;">Page 462</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 know.</p> <p>3 Q. Okay. And if you look at</p> <p>4 Paragraph 36 of your report, it indicates that,</p> <p>5 "On or about October 15th, 2014 the CFTC sent a</p> <p>6 request to accept FXCM for production of</p> <p>7 documents and information relating to Effex's</p> <p>8 business and/or financial relationship with FXCM</p> <p>9 including but not limited to Effex's relationship</p> <p>10 as a liquidity provider to FXCM," correct?</p> <p>11 A. Yeah, you read that correctly.</p> <p>12 Q. So it's your understanding that the</p> <p>13 CFTC investigation began at the end of 2014,</p> <p>14 correct?</p> <p>15 MR. BAKER: Objection. That</p> <p>16 misstates the record.</p> <p>17 A. Yeah, I don't think that's my</p> <p>18 understanding one way or the other.</p> <p>19 Q. Do you have an understanding one way</p> <p>20 or the other as to whether or -- when the CFTC</p> <p>21 investigation began?</p> <p>22 A. The exact date, no, not as I sit here</p> <p>23 today.</p> <p>24 Q. Do you have an approximate date?</p> <p>25 A. Well, it appears, at least, as of</p>	<p style="text-align: right;">Page 464</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 Q. Okay. So is it your position that</p> <p>3 FXCM should have anticipated the outcome of those</p> <p>4 multi-year investigations at the start of the</p> <p>5 class period in March of 2012, two years before</p> <p>6 the investigations began?</p> <p>7 MR. BAKER: Objection, assumes facts</p> <p>8 not in the record.</p> <p>9 If you understand the question, you</p> <p>10 can answer.</p> <p>11 A. Well, I believe, that's the theory</p> <p>12 that Plaintiffs' lawsuit is based on.</p> <p>13 Q. And is that a theory you are putting</p> <p>14 forth as your opinion in this matter?</p> <p>15 MR. BAKER: Objection to form.</p> <p>16 A. I have not --</p> <p>17 THE WITNESS: Oh, sorry. Go ahead.</p> <p>18 MR. BAKER: That's it.</p> <p>19 A. I have not seen any evidence to</p> <p>20 suggest that that opinion is incorrect.</p> <p>21 Q. Have you done any analysis to</p> <p>22 affirmatively confirm that that opinion is</p> <p>23 correct?</p> <p>24 A. Well, I mean, I'm familiar with what</p> <p>25 the company was doing as of 2010.</p>

<p style="text-align: right;">Page 465</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 Is it foreseeable that when they were</p> <p>3 breaking CFTC regulations and lying about what</p> <p>4 they were doing that it was foreseeable that the</p> <p>5 CFTC would go ahead and fine them and tell them</p> <p>6 that they could not operate in the US? It's</p> <p>7 certainly possible. And I, certainly, haven't</p> <p>8 seen anything to suggest that that is not the</p> <p>9 case.</p> <p>10 I mean, it's like if you ask me</p> <p>11 today, okay, so, if I murdered someone today and</p> <p>12 five years before I knew I was going to murder</p> <p>13 someone, is it foreseeable that I would go to</p> <p>14 jail five years ago? Yeah, it's foreseeable I</p> <p>15 would go to jail five years ago, if I knew I was</p> <p>16 going to murder someone today.</p> <p>17 Q. So you're talking about CFTC</p> <p>18 regulations.</p> <p>19 Do you have -- are you familiar with</p> <p>20 the rules and regulations governing foreign</p> <p>21 exchange brokers?</p> <p>22 A. Am I familiar with them? "Familiar,"</p> <p>23 yes.</p> <p>24 Q. Are you offering any expert opinions</p> <p>25 as to what rules and regulations govern foreign</p>	<p style="text-align: right;">Page 467</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 Q. So you don't know other than what's</p> <p>3 in your report?</p> <p>4 A. I mean, I think, my answer speaks for</p> <p>5 itself.</p> <p>6 If it's besides what's in my report?</p> <p>7 Are we talking about things that are besides</p> <p>8 what's in my report?</p> <p>9 Q. I'm talking about whether or not</p> <p>10 you're offering an expert opinion as to when FXCM</p> <p>11 management became aware of the NFA investigations</p> <p>12 regarding its relationship with Effex.</p> <p>13 A. I believe I've asked and answered</p> <p>14 that questions multiple times now.</p> <p>15 Is now -- can I take a five-minute</p> <p>16 break? I just need to go get some water, if</p> <p>17 that's okay. It doesn't even have to be five</p> <p>18 minutes. It can be two minutes. I'm just going</p> <p>19 to the kitchen.</p> <p>20 Q. That's fine. We can take a break.</p> <p>21 A. Alright. I haven't heard anything.</p> <p>22 So I'm going to assume that --</p> <p>23 THE VIDEOGRAPHER: The time is</p> <p>24 2:09 p.m. We're going off the record.</p> <p>25 (Recess taken 2:09 to 2:23 p.m.)</p>
<p style="text-align: right;">Page 466</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 exchange brokers in this matter?</p> <p>3 A. I mean, I think, we've already gone</p> <p>4 over what I've been asked to opine upon. I'm not</p> <p>5 sure that that was in that -- that would fall</p> <p>6 under what I've been asked to opine upon.</p> <p>7 Q. Do you know if there were any rules</p> <p>8 or regulations regarding foreign exchange brokers</p> <p>9 receiving payments for order flow during the</p> <p>10 class period?</p> <p>11 A. Oh, just as a matter? Well, I mean,</p> <p>12 we already talked about this, right. We said</p> <p>13 generally paying for order flow is not uncommon.</p> <p>14 That's not what -- that's what's at issue in this</p> <p>15 case.</p> <p>16 Or I should say that in and of itself</p> <p>17 is not what is at issue in this case, to the best</p> <p>18 of my understanding.</p> <p>19 Q. Do you know when FXCM management</p> <p>20 became aware of the NFA investigations regarding</p> <p>21 FXCM's relationship with Effex?</p> <p>22 A. Well, it looks like based -- at</p> <p>23 least, as of the dates that you pointed to -- me</p> <p>24 to earlier. But, certainly, it could be possible</p> <p>25 that it was before that.</p>	<p style="text-align: right;">Page 468</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 THE VIDEOGRAPHER: The time is</p> <p>3 2:23 p.m. and we're back on the record.</p> <p>4 Q. Dr. Werner, in connection with your</p> <p>5 analysis for loss causation and damages submitted</p> <p>6 in your report, did you review any prior CFTC</p> <p>7 settlements to see if similar penlites were</p> <p>8 imposed in comparable cases?</p> <p>9 MR. BAKER: Objection to form.</p> <p>10 A. No, I did not.</p> <p>11 Q. And did you review any prior court</p> <p>12 decisions in cases brought by the CFTC to see if</p> <p>13 similar penlites were imposed in comparable</p> <p>14 cases?</p> <p>15 MR. BAKER: Objection to form.</p> <p>16 A. Alright. So maybe I should give a</p> <p>17 little clarification. In the context of this</p> <p>18 case, no. With regards to those two questions,</p> <p>19 this question and the last question, I mean, I've</p> <p>20 certainly looked at these types of agreements.</p> <p>21 But with regards -- but in -- with regards to</p> <p>22 this case, the answer is, no.</p> <p>23 Q. Were you aware generally of any</p> <p>24 comparable cases where a foreign exchange broker</p> <p>25 withdrew from the US markets?</p>

<p style="text-align: right;">Page 469</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 A. That's an interesting question.</p> <p>3 MR. BAKER: Objection to -- I'm</p> <p>4 sorry. Objection to form.</p> <p>5 Go ahead.</p> <p>6 A. Not as I sit here today.</p> <p>7 Q. And earlier today we were discussing</p> <p>8 the foreseeability from FXCM's perspective of</p> <p>9 settling regulatory inquiries beginning as early</p> <p>10 as 2012.</p> <p>11 Do you recall that conversation?</p> <p>12 A. I'm sorry. Can you repeat the</p> <p>13 question?</p> <p>14 Q. We had a series of questions and</p> <p>15 answers regarding whether or not it would have</p> <p>16 been foreseeable to FXCM in March of 2012 that it</p> <p>17 would ultimately have to settle regulatory</p> <p>18 investigations through an agreement that required</p> <p>19 among other things withdrawing from the US</p> <p>20 market.</p> <p>21 A. I'm not -- I don't remember that</p> <p>22 specific conversation. If you want to point to</p> <p>23 something where we talked about that earlier...</p> <p>24 Q. Is it your opinion that it was</p> <p>25 foreseeable to FXCM in March of 2012 that they</p>	<p style="text-align: right;">Page 471</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 recall. But we can, certainly, look at my</p> <p>3 earlier reports or I can look at my earlier</p> <p>4 reports to refresh my memory.</p> <p>5 Q. We can pull up the opinion as well.</p> <p>6 MR. ISAJIW: Evan, can you add that</p> <p>7 to the folder please.</p> <p>8 A. Yeah, I mean, it's your deposition,</p> <p>9 whatever you'd like to do.</p> <p>10 MS. ENNIS: It's been introduced. It</p> <p>11 was previously marked as Werner Exhibit 7.</p> <p>12 (Deposition Exhibit Werner 7, Opinion</p> <p>13 & Order, was previously marked for</p> <p>14 identification.)</p> <p>15 Q. Okay. Let me know when you have</p> <p>16 access to it?</p> <p>17 A. Okay, hold on one second.</p> <p>18 Huh. Exhibit 328 -- ah, there we go,</p> <p>19 alright.</p> <p>20 Wait, wait, wait. The 3/28/19</p> <p>21 opinion?</p> <p>22 Q. That's correct.</p> <p>23 A. Okay. And so -- ah, and this is</p> <p>24 Exhibit 7. Yeah, okay.</p> <p>25 Q. Okay. Did you review this opinion in</p>
<p style="text-align: right;">Page 470</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 would enter into a settlement with the CFTC which</p> <p>3 would involve amongst other things withdrawal</p> <p>4 from the US market?</p> <p>5 MR. BAKER: Objection, asked and</p> <p>6 answered.</p> <p>7 A. Right. So I refer to my previous</p> <p>8 answers. I mean, certainly, the Plaintiffs</p> <p>9 contend that that was foreseeable. I haven't</p> <p>10 seen any evidence to suggest that it wasn't</p> <p>11 foreseeable to the extent -- to the same extent</p> <p>12 that I talked about a "murder" -- an example</p> <p>13 using "murder" previously, you know.</p> <p>14 If I think about murdering somebody</p> <p>15 and then actually do it five years later, do I</p> <p>16 know when I'm thinking about it that I can go to</p> <p>17 jail for murdering somebody? Yeah, I know -- I</p> <p>18 know that.</p> <p>19 Q. Okay. Are you aware that the Court</p> <p>20 issued an opinion and order on the Defendant's</p> <p>21 motion to dismiss the complaint in this matter on</p> <p>22 March 28, 2015?</p> <p>23 A. I -- I'm sorry, what was the date?</p> <p>24 Q. March 28, 2015.</p> <p>25 A. March 28th? So let's -- I don't</p>	<p style="text-align: right;">Page 472</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 connection with your loss causation analysis?</p> <p>3 A. Well, to the extent it appears to be</p> <p>4 an exhibit from my earlier deposition, I suppose</p> <p>5 the answer is, yes.</p> <p>6 Q. Okay. And can you turn to Page 27 of</p> <p>7 that opinion.</p> <p>8 A. Okay.</p> <p>9 Q. And from Pages 27 to 29, the Court</p> <p>10 discusses the complaint's allegation that FXCM</p> <p>11 should have disclosed the regulatory</p> <p>12 investigations by the CFTC and NFA and the Court</p> <p>13 dismissed those claims stating on Page 28 at the</p> <p>14 bottom, "As courts in this district have</p> <p>15 repeatedly held, companies do not have an</p> <p>16 affirmative duty to speculate or disclose</p> <p>17 uncharged, unadjudicated wrongdoings or</p> <p>18 mismanagement. Thus the Court concludes that</p> <p>19 Plaintiffs have failed to allege that FXCM made</p> <p>20 false or misleading statements with respect to</p> <p>21 regulatory investigations that it was</p> <p>22 undergoing."</p> <p>23 Have you read that before in</p> <p>24 connection with your loss causation report?</p> <p>25 A. I believe so. But then, again, you</p>

<p style="text-align: right;">Page 473</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 might as well read the next sentence.</p> <p>3 "Plaintiffs are correct that in light of this</p> <p>4 expressed disclosure, the company was acquired to</p> <p>5 speak truthfully about any ongoing investigations</p> <p>6 that it was undergoing."</p> <p>7 Q. In your view, is something that is</p> <p>8 "speculative," "uncharged," "unadjudicated"</p> <p>9 foreseeable?</p> <p>10 MR. BAKER: Objection to form.</p> <p>11 A. Again, I mean, I hate to keep going</p> <p>12 back to this simple example. But look, again, if</p> <p>13 I think about murdering someone five years ago</p> <p>14 and I end up doing it today, was it foreseeable</p> <p>15 that I could go to jail five years ago when I was</p> <p>16 thinking about killing somebody? Yeah, it was</p> <p>17 foreseeable.</p> <p>18 I mean, it's the same issue. We keep</p> <p>19 coming back to this. My understanding is, you</p> <p>20 know, this behavior began in 2010, which is two</p> <p>21 years before the class period.</p> <p>22 Look, if I'm doing something illegal,</p> <p>23 is it foreseeable I might go to jail some day?</p> <p>24 Yeah, I'm certainly going to weigh that in or</p> <p>25 look at that as a real possibility.</p>	<p style="text-align: right;">Page 475</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 two times now. I don't have a --</p> <p>3 Q. Let's switch gears for a moment.</p> <p>4 Are you familiar with the "SNB flash</p> <p>5 crash"?</p> <p>6 A. Are you speaking of the crash in</p> <p>7 2015?</p> <p>8 Q. I am.</p> <p>9 A. Is there a reason -- so, to the</p> <p>10 extent that this -- I've discussed it numerous</p> <p>11 times in my previous reports; is there an</p> <p>12 indication that I'm not familiar with it?</p> <p>13 Q. Do you know whether the SNB flash</p> <p>14 crash affected the CFTC and NFA investigations?</p> <p>15 MR. BAKER: Objection to form.</p> <p>16 A. As I sit here, I don't know one way</p> <p>17 or the other.</p> <p>18 Q. Do you know whether the CFTC and NFA</p> <p>19 investigations concerning the Effex relationship</p> <p>20 were paused prior to the SNB flash crash?</p> <p>21 A. I don't have knowledge of that one</p> <p>22 way or the other.</p> <p>23 Q. Do you know whether those</p> <p>24 investigations restarted after the flash crash?</p> <p>25 A. I don't know one way or the other.</p>
<p style="text-align: right;">Page 474</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 So I'm not sure where all these</p> <p>3 questions going. I mean, I understand where all</p> <p>4 these questions are going, but, you know, my</p> <p>5 answer is going to be the same.</p> <p>6 Plaintiffs believe it was</p> <p>7 foreseeable. I see no evidence to indicate that</p> <p>8 it's not foreseeable. And if you're asking me is</p> <p>9 it foreseeable I'm going to be punished for</p> <p>10 something that I'm doing in the past which I know</p> <p>11 to be legal? Yeah, it's foreseeable.</p> <p>12 Q. And you are aware that the Court has</p> <p>13 already dismissed Plaintiffs' claims of</p> <p>14 misstatements relating to the regulatory</p> <p>15 investigation in this case, correct?</p> <p>16 A. Right, in the same way that I am</p> <p>17 familiar with the fact that Plaintiffs are</p> <p>18 correct, that in light of the expressed</p> <p>19 disclosure, the company was required to speak</p> <p>20 truthfully about any ongoing investigations that</p> <p>21 it was undergoing.</p> <p>22 Q. And it dismissed the claims related</p> <p>23 to the allegations that it didn't do so, correct?</p> <p>24 A. I don't -- I'm not sure how else to</p> <p>25 answer that question. I think I've answered it</p>	<p style="text-align: right;">Page 476</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 Q. If those investigations were paused</p> <p>3 prior to the flash crash, is it still your</p> <p>4 position that FXCM should have foreseen that it</p> <p>5 would have to withdraw from the US business</p> <p>6 before the flash crash?</p> <p>7 A. I mean, we're -- we keep going over</p> <p>8 this. So that's -- I believe that's what the</p> <p>9 Plaintiffs are alleging.</p> <p>10 Again, I'll go back to the "murder"</p> <p>11 example because I think it's simple. If I'm</p> <p>12 thinking about committing murder and, you know, I</p> <p>13 have committed murder and there's an</p> <p>14 investigation of me having committed murder and</p> <p>15 that investigation pauses and starts up again at</p> <p>16 some point in the future and I'm charged with</p> <p>17 murder, if you're asking me if it was foreseeable</p> <p>18 that I was going to be charged with murder, yeah,</p> <p>19 it was foreseeable that that was a real</p> <p>20 possibility.</p> <p>21 I mean, if my analogy doesn't work,</p> <p>22 go ahead and tell me why but...</p> <p>23 Q. Yeah, I mean, I struggle with that</p> <p>24 analogy on a multitude of levels. But I think I</p> <p>25 now have your best testimony on it, which is all</p>

<p style="text-align: right;">Page 477</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 that I'm looking to get.</p> <p>3 I believe I asked you before and you</p> <p>4 conceded that pay for flow arrangements in</p> <p>5 general weren't prohibited under the CFTC</p> <p>6 application's rules and regulations, correct?</p> <p>7 A. I believe that's what I stated, yes.</p> <p>8 MR. BAKER: Objection to the form --</p> <p>9 THE WITNESS: Go ahead. Sorry, Josh.</p> <p>10 MR. BAKER: Objection to the extent</p> <p>11 that it misrepresents prior testimony.</p> <p>12 But you can answer.</p> <p>13 A. Alright. So I refer to my prior</p> <p>14 testimony. But, in general -- in general, so not</p> <p>15 in this case specific, you know, there's payment</p> <p>16 for order flow. That's not unusual.</p> <p>17 Q. Let's switch gears.</p> <p>18 Would you agree that information that</p> <p>19 is value relevant to investors -- sorry, let me</p> <p>20 ask a better question.</p> <p>21 Do you agree that information would</p> <p>22 be value relevant to investors if it has an</p> <p>23 impact on the future cash flows of a company?</p> <p>24 A. I mean, there's all sorts --</p> <p>25 generally, I believe your statement is correct.</p>	<p style="text-align: right;">Page 479</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 flow stopped in August 2014, is it your opinion</p> <p>3 that FXCM continued to have a conflict of</p> <p>4 interest with its customers after August of 2014?</p> <p>5 A. Hmm. That's an interesting question.</p> <p>6 I don't know what FXCM was doing. But, I mean,</p> <p>7 look, this case isn't strictly about payment for</p> <p>8 order flow. It's about not explaining the true</p> <p>9 relationship between the two entities where this</p> <p>10 order flow is occurring. I mean, this was the</p> <p>11 only firm that was paying for order flow.</p> <p>12 I mean, there's all sorts of</p> <p>13 tangential facts here that you're ignoring. So,</p> <p>14 to the extent that I can give you an accurate</p> <p>15 answer with regards to the fact specific issues</p> <p>16 of this case, it's really -- it's really</p> <p>17 difficult to do that.</p> <p>18 If you're asking me as general</p> <p>19 practice do people pay for order flow? That's my</p> <p>20 understanding.</p> <p>21 So going back to my crime analogy, if</p> <p>22 I stopped committing crimes in 2014, is it</p> <p>23 foreseeable that I might be punished for that?</p> <p>24 2019? Yeah, it's foreseeable that I still might</p> <p>25 be punished for crimes that I stopped committing</p>
<p style="text-align: right;">Page 478</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 I mean, there's all sorts of qualifiers you</p> <p>3 should probably put in there like material</p> <p>4 information. I mean, look if my cash flows are</p> <p>5 going to increase by a dollar and I earn a</p> <p>6 billion dollars a years, is that going to make a</p> <p>7 big difference to the market? Probably not.</p> <p>8 So a it's poorly worded question. To</p> <p>9 the extent that you're talking about in general,</p> <p>10 it's probably -- it's not an inaccurate</p> <p>11 statement.</p> <p>12 Q. Are you aware that Effex stopped</p> <p>13 paying FXCM for order flow before the end of the</p> <p>14 class period?</p> <p>15 A. That is my understanding.</p> <p>16 Q. And are you aware that Effex stopped</p> <p>17 paying FXCM for order flow as of August of 2014?</p> <p>18 A. I believe that jogs with my</p> <p>19 recollection.</p> <p>20 Q. And are you aware that FXCM</p> <p>21 publically disclosed in its SEC filings that it</p> <p>22 had stopped receiving payments for order flow as</p> <p>23 of August 1, 2014?</p> <p>24 A. I am, yes.</p> <p>25 Q. Given that the payments for order</p>	<p style="text-align: right;">Page 480</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 in 2014.</p> <p>3 Q. The question that I asked you is</p> <p>4 whether or not you had an opinion as to whether</p> <p>5 FXCM continued to have a conflict of interest</p> <p>6 with its customers after August 2014 when the</p> <p>7 payment for order flow stopped?</p> <p>8 MR. BAKER: Objection, asked and</p> <p>9 answered.</p> <p>10 A. Yeah, I answered that question. I</p> <p>11 refer to the same answer I just gave or the</p> <p>12 answer to that specific question that I</p> <p>13 previously gave.</p> <p>14 Q. Do you have an opinion as to whether</p> <p>15 the nature of the information FXCM should have</p> <p>16 disclosed to the market changed after August 2014</p> <p>17 when Effex stopped paying FXCM for order flow?</p> <p>18 MR. BAKER: Objection to form.</p> <p>19 A. Yeah, I don't understand the</p> <p>20 question.</p> <p>21 Q. Did you do any analysis to determine</p> <p>22 whether or not the nature of the information that</p> <p>23 FXCM should have disclosed to the market changed</p> <p>24 after August 2014 when the payment for order flow</p> <p>25 stopped?</p>

<p style="text-align: right;">Page 481</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 MR. BAKER: Same objection.</p> <p>3 A. Same answer.</p> <p>4 Q. Given that the payment for order flow</p> <p>5 relationship stopped in August of 2014, what</p> <p>6 impact could the disclosure of FXCM's prior pay</p> <p>7 for flow relationship with Effex have on the</p> <p>8 future value of FXCM going forward beyond August</p> <p>9 of 2014?</p> <p>10 A. Well, presumably, something similar</p> <p>11 to what happened at the end of the class period.</p> <p>12 Q. And you believe what happened at the</p> <p>13 end of the class period was, specifically,</p> <p>14 related to the revelation of the prior payment</p> <p>15 for order flow relationship with Effex?</p> <p>16 A. Most certainly, among other things.</p> <p>17 I mean, that's what we keep talking. And let's</p> <p>18 go back to my report. Where is it?</p> <p>19 I think it's -- and, again, it takes</p> <p>20 me a little while to get there. I'm pretty sure</p> <p>21 if I remember correctly it's Paragraph 7 or 8 in</p> <p>22 my report. Bup, bup, bup...</p> <p>23 Yeah, this -- thus correct -- and</p> <p>24 this is Paragraph 8 of my report, "Thus</p> <p>25 corrective disclosures and their inextricable</p>	<p style="text-align: right;">Page 483</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 date, to make sure I give an accurate response to</p> <p>3 your question.</p> <p>4 Right, so to save time, all of my</p> <p>5 opinions about that and the full scope of what</p> <p>6 was disclosed on that date can be found in</p> <p>7 Paragraph 17 of my report.</p> <p>8 Q. Okay. So one of the things the</p> <p>9 market learned on February 6th, 2017 was of the</p> <p>10 CFTC's allegation that FXCM had an undisclosed</p> <p>11 interest in Effex.</p> <p>12 Would you agree with that?</p> <p>13 A. It had an "undisclosed interest in</p> <p>14 the market maker that consistently won the</p> <p>15 largest share of FXCM's trading volume." That's</p> <p>16 from Paragraph 17. And "the market maker" we're</p> <p>17 discussing there is Effex or Effex, however you</p> <p>18 want to pronounce it.</p> <p>19 Q. Another piece of information that was</p> <p>20 disclosed to the market on February 6th, 2017 was</p> <p>21 that FXCM had agreed to pay a \$7 million fine and</p> <p>22 withdraw from the US business.</p> <p>23 Do you agree with that?</p> <p>24 A. I believe that's correct.</p> <p>25 Q. In your analysis for loss causation</p>
<p style="text-align: right;">Page 482</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 ramification dissipated artificial inflation of</p> <p>3 the prices of FXCM securities and thereby caused</p> <p>4 investor losses."</p> <p>5 Q. Okay. Putting aside any regulatory</p> <p>6 ramifications, is it your opinion that the</p> <p>7 disclosure of FXCM's prior relationship with</p> <p>8 Effex impacted the value of FXCM after</p> <p>9 August 2014?</p> <p>10 MR. BAKER: Objection to form.</p> <p>11 A. Yeah, I mean, that's an incomplete</p> <p>12 hypothetical. I mean, it's not even an</p> <p>13 incomplete hypothetical. It's just a</p> <p>14 hypothetical that I have no ability to answer one</p> <p>15 way or the other.</p> <p>16 It assumes facts not in evidence. I</p> <p>17 don't know. I'm not a lawyer.</p> <p>18 Q. Let me try to ask it a different way.</p> <p>19 On February 6, 2017, the market</p> <p>20 learned of the CFTC's allegation that FXCM had an</p> <p>21 undisclosed interest in Effex; is that correct?</p> <p>22 A. Are you reading from somewhere?</p> <p>23 Q. I am not. I'm just asking you --</p> <p>24 A. Alright. So let's go to my</p> <p>25 discussion of the news that's released on that</p>	<p style="text-align: right;">Page 484</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 and damages, did you assume that both of these</p> <p>3 pieces of information, one, the undisclosed</p> <p>4 relationship with Effex and, two, the withdraw of</p> <p>5 the US business were corrective of the alleged</p> <p>6 fraud?</p> <p>7 MR. BAKER: Objection to form.</p> <p>8 A. Yeah, I -- well, again, I turn to</p> <p>9 Paragraph 8 of my report. These things are all</p> <p>10 inextricably linked.</p> <p>11 Q. And did you assume that both of these</p> <p>12 pieces of information contributed to the decline</p> <p>13 of the price for the FXCM securities?</p> <p>14 MR. BAKER: Objection to form.</p> <p>15 A. I mean, I think my report speaks for</p> <p>16 itself with regards to that question.</p> <p>17 Q. Did you attempt to quantify the price</p> <p>18 impact of each of those pieces of information</p> <p>19 separately?</p> <p>20 A. Well, to the extent that I believe</p> <p>21 they are inextricably linked, I don't think it's</p> <p>22 -- it would be very difficult or next to</p> <p>23 impossible to do that type of analysis.</p> <p>24 Q. Is it possible that the price</p> <p>25 reaction for FXCM securities was entirely</p>

<p style="text-align: right;">Page 485</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 attributable to the withdraw from its US business</p> <p>3 as opposed to attributable to the undisclosed</p> <p>4 interest in Effex?</p> <p>5 MR. BAKER: Objection.</p> <p>6 THE WITNESS: I'm sorry. Go ahead,</p> <p>7 Josh.</p> <p>8 MR. BAKER: Objection to the form.</p> <p>9 Go ahead.</p> <p>10 THE WITNESS: Sorry.</p> <p>11 A. So you're using that word "possible"</p> <p>12 again. And I don't know. I mean, I don't know</p> <p>13 what absurd example you want me to come up with.</p> <p>14 But when you ask the word, "is it</p> <p>15 possible," short of something being a hundred</p> <p>16 percent, something happening with a hundred</p> <p>17 percent certainty, it's possible.</p> <p>18 Q. And is it also possible that the</p> <p>19 price reaction was mostly attributable to FXCM's</p> <p>20 withdraw from the US market, as opposed to the</p> <p>21 undisclosed interest with Effex?</p> <p>22 MR. BAKER: Same objection.</p> <p>23 A. Again, it's -- again, it's a poorly</p> <p>24 worded question. "Is it possible?" I mean, I</p> <p>25 referred back to my previous discussions about</p>	<p style="text-align: right;">Page 487</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 implications for FXCM of operating as a dealing</p> <p>3 desk versus a no dealing desk in connection with</p> <p>4 your work in the loss causation and damages</p> <p>5 report?</p> <p>6 A. I valued FXCM -- well, I don't</p> <p>7 believe so. I mean, there is an implication that</p> <p>8 I did do that because we're talking about the but</p> <p>9 for world and the actual world. And so, to the</p> <p>10 extent that there's a corrective disclosure at</p> <p>11 the end of the class period, it's implied that I</p> <p>12 looked at that.</p> <p>13 Q. But you did no explicit analysis in</p> <p>14 connection with that?</p> <p>15 A. "Explicit"? I mean, again, to the</p> <p>16 extent that I looked at the price decline at the</p> <p>17 end of the class period, I don't know if that is</p> <p>18 -- falls under your rubric of "explicit."</p> <p>19 Q. Does your loss causation and damages</p> <p>20 analysis include an analysis of Plaintiffs'</p> <p>21 allegation relating to any GAAP violations?</p> <p>22 MR. BAKER: Objection.</p> <p>23 A. So --</p> <p>24 THE WITNESS: Oh, sorry. Go ahead,</p> <p>25 Josh.</p>
<p style="text-align: right;">Page 486</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 the possibility -- about the theory of</p> <p>3 possibility.</p> <p>4 You know, "is it possible?" I --</p> <p>5 again, anything's possible, unless there's a</p> <p>6 hundred percent chance that it's impossible.</p> <p>7 Q. And, in your analysis, you did not</p> <p>8 attempt to quantify the price reaction for each</p> <p>9 of those pieces of information separately,</p> <p>10 correct?</p> <p>11 MR. BAKER: Objection, asked and</p> <p>12 answered.</p> <p>13 THE WITNESS: I'm glad you said that</p> <p>14 because I was about to say "asked and answered."</p> <p>15 A. Or instead of "asked and answered,"</p> <p>16 since I'm not the lawyer here, I refer to my</p> <p>17 previous answer to that question, which I think</p> <p>18 has been asked a couple of times now.</p> <p>19 Q. In connection with your work for the</p> <p>20 loss causation and damages report, did you</p> <p>21 analyze whether an agency or no dealing desk</p> <p>22 model is preferable to a principal or dealing</p> <p>23 desk model from a valuation standpoint for FXCM?</p> <p>24 A. For FXCM? I don't believe so.</p> <p>25 Q. Did you analyze the value</p>	<p style="text-align: right;">Page 488</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 MR. BAKER: Objection to form.</p> <p>3 That's fine.</p> <p>4 A. So, as I've stated previously, I've</p> <p>5 assumed that Plaintiffs' allegations are correct.</p> <p>6 I have not seen anything to suggest that they are</p> <p>7 incorrect. I mean, based on my understanding of</p> <p>8 accounting is what they did a GAAP violation.</p> <p>9 I'm not sure I've been preferred here as -- or</p> <p>10 proffered here as an expert on accounting.</p> <p>11 I believe and don't quote me on this</p> <p>12 and I, certainly, wouldn't want to charge someone</p> <p>13 for this opinion, but it was a GAAP -- what they</p> <p>14 did was a GAAP violation, but I am not sure as I</p> <p>15 sit here today.</p> <p>16 Q. You're aware that FXCM did not</p> <p>17 restate its financial statements following the</p> <p>18 CFTC and NFA settlements; is that right?</p> <p>19 A. At what point in time?</p> <p>20 Q. After the CFTC and NFA settlements.</p> <p>21 A. So immediately after?</p> <p>22 Q. At anytime after.</p> <p>23 A. Well, I don't know. I haven't seen</p> <p>24 their private financials. I don't remember what</p> <p>25 happened in the context of their bankruptcy. But</p>

<p style="text-align: right;">Page 489</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 if you want to stipulate to that, I'll -- I have</p> <p>3 no reason to think you're wrong.</p> <p>4 Q. Do you offer any opinion in your loss</p> <p>5 causation and damages report about a purported</p> <p>6 corrective disclosure with regard to GAAP and</p> <p>7 FXCM's accounting?</p> <p>8 A. My report speaks for itself as to</p> <p>9 what I've considered. And so, you know, I refer</p> <p>10 to Paragraph 7 of my report as to what I looked</p> <p>11 at in forming this -- that's what I've been asked</p> <p>12 to do.</p> <p>13 Q. Are you aware that the CFTC and NFA</p> <p>14 settlement do not address FXCM's compliance with</p> <p>15 GAAP?</p> <p>16 MR. BAKER: Objection, assumes facts</p> <p>17 not in the record.</p> <p>18 A. I don't know one way or the other as</p> <p>19 I sit here.</p> <p>20 Q. I think this would be a good time to</p> <p>21 take another short break. Maybe give us ten</p> <p>22 minutes so I can regroup and see how much further</p> <p>23 we have.</p> <p>24 MR. ISAJIW: So let's go off the</p> <p>25 record.</p>	<p style="text-align: right;">Page 491</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 if you use DCF analysis. So it's implied. But</p> <p>3 if you're asking if I separately did a DCF cash</p> <p>4 flow analysis for this, I did not.</p> <p>5 Q. Okay. And did you apply a return</p> <p>6 retribution analysis?</p> <p>7 A. I'm not sure I've ever heard of that,</p> <p>8 "a return retribution," like I'm getting revenge</p> <p>9 on somebody?</p> <p>10 Q. I'm sorry, a return attribution.</p> <p>11 A. Oh, okay.</p> <p>12 Q. I apologize.</p> <p>13 A. It's been a long day. Sorry.</p> <p>14 A "return attribution analysis"? So</p> <p>15 do you mean attributing a return -- different</p> <p>16 parts of a return to different factors?</p> <p>17 Q. So I, actually, am looking to get</p> <p>18 that information from you. What I -- let me back</p> <p>19 up and maybe this will give it more context.</p> <p>20 A. Okay.</p> <p>21 Q. In your market efficiency reports,</p> <p>22 you did not perform a loss causation and damages</p> <p>23 analysis, correct?</p> <p>24 A. That is correct, yes.</p> <p>25 Q. But if you recall, there were</p>
<p style="text-align: right;">Page 490</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 THE VIDEOGRAPHER: The time is</p> <p>3 2:51 p.m. We're going off the record.</p> <p>4 (Lunch recess taken 2:51 to</p> <p>5 p.m.)</p> <p>6 THE VIDEOGRAPHER: The time is</p> <p>7 3:55 p.m. and we're back on the record.</p> <p>8 Q. Dr. Werner, just a few more questions</p> <p>9 hopefully to finish this up.</p> <p>10 In connection with your loss</p> <p>11 causation and damages analysis, did you use</p> <p>12 valuation multiple models?</p> <p>13 A. Did I use "valuation multiple</p> <p>14 models"? Hmm. I think I know what you're</p> <p>15 talking about. Can you give me an example?</p> <p>16 Q. I can't. But let's put a pin on that</p> <p>17 and I'll ask another question and come back to</p> <p>18 it.</p> <p>19 A. Okay.</p> <p>20 Q. Did you use a discounted cash flow</p> <p>21 model?</p> <p>22 A. Well, I mean -- okay, so that's a</p> <p>23 difficult question to answer only to the extent</p> <p>24 that, you know, the change in the stock price</p> <p>25 will be -- should reflect the same answer you get</p>	<p style="text-align: right;">Page 492</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 discussions about how you would potentially</p> <p>3 conduct such analysis in those reports; is that</p> <p>4 correct?</p> <p>5 A. I do not recall. It's possible. I</p> <p>6 don't recall those conversations, as I sit here</p> <p>7 today.</p> <p>8 Q. Fair enough.</p> <p>9 Can you take a look at your rebuttal</p> <p>10 report, which is Exhibit 9.</p> <p>11 A. Exhibit 3... Hold on. Sorry.</p> <p>12 Rebuttal report, okay, I've got it.</p> <p>13 Q. And you recall that -- and I'm not</p> <p>14 looking for specifics here. Just at a very</p> <p>15 general level, Dr. Hendershott -- Professor</p> <p>16 Hendershott submitted a report where he had</p> <p>17 criticisms of your potential loss causation</p> <p>18 analysis; is that correct?</p> <p>19 A. Well, so, to the extent that I didn't</p> <p>20 perform a loss causation analysis for that</p> <p>21 report, I don't -- I'm not sure I would</p> <p>22 characterize it that way or I'm not sure that</p> <p>23 that's an accurate characterization of what Dr.</p> <p>24 Hendershott did.</p> <p>25 Q. Fair enough.</p>

<p style="text-align: right;">Page 493</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 If you look at Paragraph 83 of your</p> <p>3 rebuttal report on market efficiency.</p> <p>4 A. Hold on. Sorry.</p> <p>5 Okay, yeah, I'm there.</p> <p>6 Q. And then if you take a look at</p> <p>7 Paragraph 85 of your -- of the same report.</p> <p>8 A. Okay.</p> <p>9 Q. And in Paragraph 85 in response to</p> <p>10 Dr. Hendershott's criticisms you note, "The</p> <p>11 Forensic analyst has in their employ a variety of</p> <p>12 valuation tools designed to accommodate the</p> <p>13 potential valuation complexities identified by</p> <p>14 Dr. Hendershott. Among the commonly used</p> <p>15 valuation tools that are available are valuation</p> <p>16 multiple models such as those based on earnings,</p> <p>17 EBITDA, revenue, book value and cash flow."</p> <p>18 Did you use any of those valuation</p> <p>19 multiple models in connection with your loss</p> <p>20 causation and damages report?</p> <p>21 A. So I would answer the question this</p> <p>22 way. I considered all of those models in</p> <p>23 presenting my opinions in my loss causation</p> <p>24 report, which is Exhibit 8. But I did not -- I</p> <p>25 did not present any of those. That's probably</p>	<p style="text-align: right;">Page 495</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 I did not try to -- to the extent that it was --</p> <p>3 one would be unable to disentangle those</p> <p>4 attributes or whatever you want to call it. No,</p> <p>5 I did not do that.</p> <p>6 Q. Okay.</p> <p>7 A. So, again, I considered doing it, but</p> <p>8 I did not.</p> <p>9 Q. Thank you.</p> <p>10 In Paragraph 8 of your loss causation</p> <p>11 report you state that, "Following the corrective</p> <p>12 disclosure, analyst valuation models reflected</p> <p>13 the reality that the company could no longer</p> <p>14 operate the business in the US and that FXCM had</p> <p>15 previously misrepresented the veracity of its</p> <p>16 agency business model."</p> <p>17 But you don't cite to any analyst</p> <p>18 reports in support of that statement in</p> <p>19 Paragraph 8.</p> <p>20 Do you know which analyst reports</p> <p>21 you're referring to?</p> <p>22 A. The collection of analyst reports</p> <p>23 that came out after February 6th of that year.</p> <p>24 Q. Any ones in particular that you're</p> <p>25 referring to where the "analyst valuation models</p>
<p style="text-align: right;">Page 494</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 the wrong way to say it.</p> <p>3 I did not -- I considered those</p> <p>4 analyses. I did not perform any of them.</p> <p>5 Q. Okay. And so that's true for the</p> <p>6 discounted cash flow and the return attribution</p> <p>7 analyses as well?</p> <p>8 A. Well, to the extent -- and I hate to</p> <p>9 keep taking -- bringing you back to this</p> <p>10 sentence. To the extent that -- let's just make</p> <p>11 sure.</p> <p>12 And I'm reading from Paragraph 7 of</p> <p>13 my report in this matter. The alleged fraud --</p> <p>14 or I should say so Exhibit 8. The fraud -- "The</p> <p>15 alleged fraud also concealed from the market the</p> <p>16 inextricable ramification that would manifest</p> <p>17 upon corrective disclosures, all of which in turn</p> <p>18 caused the price of FXCM's securities to be</p> <p>19 artificially inflated."</p> <p>20 So, to the extent that there were</p> <p>21 "inextricable ramifications" with regard to those</p> <p>22 returns, I did not -- and I think we discussed</p> <p>23 this at length earlier.</p> <p>24 I did not attribute -- I attributed</p> <p>25 the entire decline to the corrective disclosures.</p>	<p style="text-align: right;">Page 496</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 reflected the reality that the company could no</p> <p>3 longer operate its business in the US"?</p> <p>4 A. So what I would suggest if we really</p> <p>5 want to go through this is let's look at my --</p> <p>6 well, I don't know what exhibit, maybe Exhibit 2</p> <p>7 to my original report.</p> <p>8 I guess what I would say is let's</p> <p>9 take a look at all of the analyst reports that</p> <p>10 were issued after February 6th, 2017. I can walk</p> <p>11 through each one of those and talk about the</p> <p>12 extent that those -- the information contained in</p> <p>13 those are responsive to your question.</p> <p>14 Q. Is it fair to say that you're</p> <p>15 referring just generally to those analyst reports</p> <p>16 as opposed to a specific analyst report that</p> <p>17 you're citing in Paragraph 8? So the totality of</p> <p>18 those analyst reports as opposed to one</p> <p>19 individual? I'm just trying to get a sense of</p> <p>20 the universe of documents that are relevant?</p> <p>21 A. Sure. And so I'm not sure that that</p> <p>22 is a correct characterization. I think to give</p> <p>23 you the best possible answer I could, I would</p> <p>24 need to look at each one of those reports</p> <p>25 individually.</p>

<p style="text-align: right;">Page 497</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 Q. I'm not going to ask you to do that</p> <p>3 here because there are a number of them and I</p> <p>4 think that would be cumbersome.</p> <p>5 Have you reviewed the expert report</p> <p>6 of John Barron, which was submitted by Plaintiffs</p> <p>7 in this matter?</p> <p>8 A. As I sit here, I don't recall.</p> <p>9 Q. I want to take a look at Paragraph 95</p> <p>10 of your report. Again, it's the loss causation</p> <p>11 report when I say "your report."</p> <p>12 A. Okay.</p> <p>13 Q. And in Paragraph 95, you conclude --</p> <p>14 I'm sorry.</p> <p>15 In Paragraph 95 you state, "For a</p> <p>16 number of reasons, a stable dollar based ribbon</p> <p>17 is the more conservative inflation ribbon design</p> <p>18 in the instant case."</p> <p>19 Did I read that correctly?</p> <p>20 A. You did, yeah.</p> <p>21 Q. Are you saying that in your loss</p> <p>22 causation and damages report you considered using</p> <p>23 both a stable dollar based ribbon and a</p> <p>24 percentage inflation based ribbon?</p> <p>25 A. Did I consider it? I mean, I suppose</p>	<p style="text-align: right;">Page 499</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 Q. Have you ever used a constant</p> <p>3 percentage inflation ribbon in a loss causation</p> <p>4 analysis?</p> <p>5 A. So, just so we're clear -- and when</p> <p>6 you say, "loss causation analysis," do you</p> <p>7 include like any damage analysis? Because,</p> <p>8 certainly, I have used a percentage base ribbon</p> <p>9 in damage analysis, which I have not submitted as</p> <p>10 expert testimony. It is possible that in a --</p> <p>11 that I can think of maybe one case -- excuse me</p> <p>12 -- where I may have used a percentage ribbon --</p> <p>13 constant percentage ribbon in a loss causation</p> <p>14 report. But, you know, that's the best of my</p> <p>15 recollection.</p> <p>16 Q. Just to narrow it down to loss</p> <p>17 causation and damages reports that you have</p> <p>18 submitted in connection with securities fraud</p> <p>19 cases, have you used a constant percentage</p> <p>20 inflation ribbon methodology?</p> <p>21 A. Without looking at each one of those</p> <p>22 reports, I would say it's not -- it's not likely,</p> <p>23 but it is possible.</p> <p>24 Q. Are you aware of any court decisions</p> <p>25 that have accepted the use of a constant</p>
<p style="text-align: right;">Page 498</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 there's an implication that I considered it. I</p> <p>3 mean, to the extent that whenever I calculate</p> <p>4 damages, I mean, I think about different ways to</p> <p>5 calculate inflation.</p> <p>6 Q. So, In Paragraph 90 -- I'm just</p> <p>7 trying to get a sense of the process here.</p> <p>8 In Paragraph 94 you say, "The design</p> <p>9 of the inflation ribbon can either be dollar</p> <p>10 based or percentage based."</p> <p>11 And I'm just trying to understand if</p> <p>12 between Paragraphs 94 and 95 you're saying that</p> <p>13 you considered a dollar based and a percentage</p> <p>14 based and then determined that the dollar base</p> <p>15 was the more conservative of the two possible</p> <p>16 options?</p> <p>17 A. Well, in this example, by definition</p> <p>18 it's the more conservative of the two options.</p> <p>19 In other words, if I were to use a percentage</p> <p>20 based decline per share -- I mean, I'd have in</p> <p>21 and out damages and per share damages,</p> <p>22 ultimately -- you know, I should say aggregate</p> <p>23 damages, whatever they turn out to be, would be</p> <p>24 significantly higher than what would be estimated</p> <p>25 when one uses a constant dollar inflation ribbon.</p>	<p style="text-align: right;">Page 500</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 percentage inflation ribbon in connection with</p> <p>3 loss causation and damages analysis in a</p> <p>4 securities fraud case?</p> <p>5 A. As I sit here today, I don't know one</p> <p>6 way or the other what courts have done with</p> <p>7 regard to constant percentage ribbon.</p> <p>8 Q. Later on in Paragraph 95, second to</p> <p>9 last sentence you say, "Empirically observed</p> <p>10 declines elicited by disclosure at the end of the</p> <p>11 class period would therefore have had a bigger</p> <p>12 effect if the disclosure had occurred earlier."</p> <p>13 Are you saying there that using</p> <p>14 constant dollar inflation in this case is more</p> <p>15 conservative than using some form of time varying</p> <p>16 inflation that accounts for differences in --</p> <p>17 earlier in the class period?</p> <p>18 A. I don't think that's -- I don't think</p> <p>19 that's what I'm saying. I'm just suggesting</p> <p>20 that, certainly, my estimate of inflation is a</p> <p>21 floor, not a ceiling.</p> <p>22 Q. Did you consider conducting an</p> <p>23 analysis for damages that would measure inflation</p> <p>24 as it could vary over time during the class</p> <p>25 period?</p>

<p style="text-align: right;">Page 501</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 A. Yes.</p> <p>3 Q. Why did you determine not to use that</p> <p>4 methodology for a measure of inflation?</p> <p>5 A. Because I saw no evidence to suggest</p> <p>6 that that would be appropriate.</p> <p>7 Q. And what types of evidence would,</p> <p>8 generally speaking, suggest that that type of</p> <p>9 methodology would be appropriate?</p> <p>10 A. In this matter, I'm not quite sure.</p> <p>11 I mean, it's going to vary from case to case.</p> <p>12 You know, I mean, yeah, I'd be speculating at</p> <p>13 this point as to what the proper answer to that</p> <p>14 question is. But, generally, I mean, there is a</p> <p>15 whole host of factors that could influence that</p> <p>16 decision.</p> <p>17 Q. So is it fair to say that you could</p> <p>18 have performed an analysis for the inflation</p> <p>19 ribbon that would have taken into account</p> <p>20 variations of inflation during different points</p> <p>21 of the class period, but determined that the</p> <p>22 constant dollar inflation ribbon methodology was</p> <p>23 the one that you would use in this case?</p> <p>24 A. Well, so, again, I believe to the</p> <p>25 extent -- based my understanding of the facts and</p>	<p style="text-align: right;">Page 503</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 analyst reports and couple of SEC documents. I</p> <p>3 mean, I basically reviewed documents including</p> <p>4 reports in this matter.</p> <p>5 Q. Okay. And is it fair to say</p> <p>6 consistent with my understanding of your prior</p> <p>7 testimony that those documents would have been</p> <p>8 the documents that you cited to in your reports,</p> <p>9 any of the three in one way or another?</p> <p>10 A. Well, so you've given a couple of</p> <p>11 examples of things that I may have reviewed. So</p> <p>12 I don't remember reviewing the Judge's opinion</p> <p>13 with regards to market efficiency in preparing</p> <p>14 for this deposition. I mean, did I -- it's</p> <p>15 possible I glanced at it. I don't think I</p> <p>16 discussed any of the deposition testimony that</p> <p>17 you referred to earlier that I may have</p> <p>18 previously seen. So I think that's a fair</p> <p>19 characterization.</p> <p>20 Q. So, other than the meetings that you</p> <p>21 just discussed with Mr. Baker and, I believe,</p> <p>22 there's one other member of your support staff at</p> <p>23 Crowninshield -- the name is escaping me -- were</p> <p>24 there any other meetings in preparation for this</p> <p>25 deposition with anybody else?</p>
<p style="text-align: right;">Page 502</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 not seeing any evidence to the contrary, I</p> <p>3 believe, the methodology I used was the most</p> <p>4 conservative.</p> <p>5 Now, ultimately, if the Court were to</p> <p>6 come out and find that there were other things</p> <p>7 that changed the inflation during the class</p> <p>8 period, I'd certainly need to take that into</p> <p>9 consideration in re-estimating a possible</p> <p>10 inflation ribbon.</p> <p>11 Q. Okay. Thank you for that.</p> <p>12 Give me one second please.</p> <p>13 A. Sure.</p> <p>14 Q. How much time did you spend preparing</p> <p>15 for this deposition?</p> <p>16 A. Total? Less than ten hours.</p> <p>17 Q. And what did you do to prepare for</p> <p>18 this deposition?</p> <p>19 A. I re-read most of my -- all of my --</p> <p>20 or all of the reports in this, matter, not just</p> <p>21 mine, to the extent that I referred to them in my</p> <p>22 reports. I had a conversation -- I spoke with</p> <p>23 Mr. Baker for about -- with Nariner Walia for</p> <p>24 about 45 minutes I believe yesterday. I mean, I</p> <p>25 probably -- I probably looked at a couple of</p>	<p style="text-align: right;">Page 504</p> <p>1 CONFIDENTIAL - ADAM WERNER, Ph.D.</p> <p>2 A. I may have just had a discussion with</p> <p>3 Mr. Walia, who is the other person in the meeting</p> <p>4 yesterday. I may have had a couple of</p> <p>5 conversations with him over the course of</p> <p>6 reviewing for my deposition, but that would be</p> <p>7 it. I mean, those conversations wouldn't have</p> <p>8 lasted more than a couple of minutes.</p> <p>9 Q. Give me one more minute.</p> <p>10 Okay. With that I think that is all</p> <p>11 the questions I have for you today. Again, I</p> <p>12 thank you for your time today.</p> <p>13 MR. ISAJIW: Josh, do you have</p> <p>14 anything?</p> <p>15 MR. BAKER: No, thank you.</p> <p>16 Thank you.</p> <p>17 Q. So I'll give you back the rest of the</p> <p>18 day. Thank you, sir.</p> <p>19 A. Fantastic. Thank you.</p> <p>20 THE VIDEOGRAPHER: The time is</p> <p>21 4:16 p.m. We're going off the record.</p> <p>22 (Time noted 4:16 p.m.)</p> <p>23</p> <p>24</p> <p>25</p>

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1 CERTIFICATE OF DEPONENT

2

3 I have read the foregoing transcript of

4 my deposition and except for any corrections or

5 changes noted on the errata sheet, I hereby

6 subscribe to the transcript as an accurate record

7 of the statements made by me.

8

9

10 _____

11 ADAM WERNER, Ph.D.

12 SUBSCRIBED AND SWORN before and to me

13 this ____ day of _____, 20__.

14

15

16 _____

17 NOTARY PUBLIC

18

19

20 My Commission expires:

21

22

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24

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1 CONFIDENTIAL - ADAM WERNER, Ph.D.

2 CERTIFICATE OF REPORTER

3 I, SILVIA P. WAGE, a Certified Shorthand

4 Reporter, Certified Realtime Reporter and Registered

5 Reporter, hereby certify that the witness in the

6 foregoing deposition was by me duly sworn to tell

7 the truth, the whole truth, and nothing but the

8 truth in the within-entitled cause; that said

9 deposition was taken down in shorthand by me, a

10 disinterested person, at the time and place

11 therein stated, and that the testimony of the

12 said witness was thereafter reduced to

13 typewriting, by computer, under my direction and

14 supervision; that before completion of the

15 deposition, review of the transcript [X] was []

16 was not requested. If requested, any changes

17 made by the deponent (and provided to the reporter)

18 during the period allowed are appended hereto.

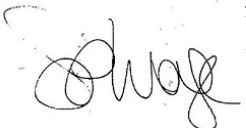
19 I further certify that I am not of counsel

20 or attorney for either or any of the parties to

21 the said deposition, nor in any way interested in

22 _____ and that I am not

23 _____ es thereto.

24 

25 License No. 30X100182700 dated: June 8th, 2021.

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1 ERRATA SHEET

2 VERITEXT/NEW YORK REPORTING, LLC

3 CASE NAME:

4 In Re Global Brokerage, Inc.

5 DATE OF DEPOSITION: 6/4/2021

6 WITNESSES' NAME: Dr. Adam Werner

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22 Dr. Adam Werner

23 SUBSCRIBED AND SWORN TO BEFORE ME

24 THIS ____ DAY OF _____, 20__.

25 _____

(NOTARY PUBLIC) MY COMMISSION EXPIRES:

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted fashion to authenticated parties who are permitted to access the material. Our data is hosted in a Tier 4 SSAE 16 certified facility.

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